



STATE OF IDAHO
DEPARTMENT OF ENVIRONMENTAL QUALITY
Board of Environmental Quality

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Dirk Kempthorne, Governor
C. Stephen Allred, Director

**IDAHO BOARD OF ENVIRONMENTAL QUALITY
MINUTES**

NOVEMBER 9, 2000

The Board of Environmental Quality convened at 8:30 a.m. at:

Idaho Department of Environmental Quality
1410 North Hilton, Conference Rooms A&B
Boise, Idaho

ROLL CALL

BOARD MEMBERS PRESENT:

Donald J. Chisholm, Chairman
Paul C. Agidius, Vice chairman
Marti Calabretta, Secretary
Dr. Joan Cloonan, Member
Dr. J. Randy MacMillan, Member
Senator Marguerite McLaughlin, Member

BOARD MEMBERS ABSENT:

Nick Purdy, Member

DEPARTMENT OF ENVIRONMENTAL QUALITY STAFF PRESENT:

C. Stephen Allred, Director
Jon Sandoval, Chief of Staff
Debra L. Cline, Administrative Assistant to the Board
Doug Conde, Deputy Attorney General, DEQ
Paula Gradwohl, Paralegal/rules coordinator
John Brueck, Waste & Remediation Program
Susan Burke, Water Quality Program
Jess Byrne, Staff Resource Officer
Keith Donahue, Deputy Attorney General, DEQ
Darrell Early, Deputy Attorney General, DEQ
Mike Edwards, Air Quality Program
Orville Green, Administrator State Air Quality Program
Bill Jerrel, Water Quality Loan Program
Kate Kelly, Administrator, State Waste & Remediation Program

Larry Koenig, Administrator, State Planning & Special Projects
Lisa Kronberg, Deputy Attorney General, DEQ
David Mabe, Administrator, Water Quality Division
Marjorie MartzEmerson, Air Quality Permits
Chris Mebane, Surface Water Program
Tim Teater, Air Quality Program
Mike McIntyre, Surface Water Program Manager
Sally Tarowsky, Information Resources

OTHERS PRESENT:

Kevin Beaton, Stoel Rives
Ed Bulgin, Amalgamated Sugar
Sharon Deeds, Western World
Beth Elroy, Monsanto
Jane Gorsuch, Intermountain Forest Assn.
Dallas Gudgell, Idaho Conservation League
Hugh O'Riorden, Givens Pursley
Brent Olmstead, Idaho Assoc. of Commerce & Industry
Dean Sangrey, Idaho Outfitters & Guides Licensing Board
Gayle Sarceda, Idaho Water Users Association (IWUA)
Suzanne Schaefer, Gallatin Group
Norm Semanko, IWUA
Grant Simonds, Outfitters & Guides
Rob Sterling, Micron Technology
Patrick Sullivan, Sullivan & Assoc.
Lynn Tominaga, Idaho Water Policy Group

PUBLIC COMMENT PERIOD – THE BOARD ALLOWS UP TO 30 MINUTES FOR THE PUBLIC TO ADDRESS THE BOARD ON ISSUES NOT SPECIFICALLY SHOWN AS AGENDA ITEMS.

No comments received.

AGENDA ITEM NO. 1 ADOPTION OF THE MINUTES OF THE OCTOBER 18, 2000 BOARD MEETING

- **MOTION:** Dr. Joan Cloonan moved the minutes of the October 18, 2000 Board meeting be adopted as prepared.
SECOND: Dr. Randy MacMillan
VOICE VOTE: Motion passed. 6 ayes; 0 nays; 1 absent (Nick Purdy)

AGENDA ITEM NO. 2

DIRECTOR'S REPORT

Director Steve Allred presented his report to the Board during the work session on November 8. He discussed the Department's budget for the coming fiscal year and the dramatic increase in workload since 1997.

AGENDA ITEM NO. 3:

**RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO,
DOCKET NO. 58-0101-9902, PENDING RULE**

Mike Edwards, Air Quality Analyst for the State Air Quality Program, presented the Rules for the Control of Air Pollution in Idaho, Docket No. 58-0101-9902. These rules will set forth policy, criteria, and procedures to ensure transportation plans, programs and applicable projects will meet federal transportation conformity regulations. Negotiated rulemaking was conducted and public comment was taken. A hearing was held in Boise on August 8, 2000. Revisions were made to the initial rule as a result of the comments.

- **MOTION:** Dr. Joan Cloonan moved the Board adopt, as pending rules, the Rules for the Control of Air Pollution in Idaho as presented in the final proposal under Docket No. 58-0101-9902.

SECOND: Dr. Randy MacMillan.

VOTE: Motion passed. 6 ayes; 0 nays; 1 absent (Nick Purdy)

AGENDA ITEM NO. 4:

**RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO,
DOCKET NO. 58-0101-0004, TEMPORARY RULE**

Tim Teater, Program Analyst for the State Air Quality Program, briefly reviewed the Rules for the Control of Air Pollution in Idaho, Docket No. 58-0101-0004. This rule docket has two parts, the first amends Section 210 of the Toxic Air Pollutant rules to correct a conflict with Section 510. The change allows the use of dilution air for soil vapor extractions and similar technology when conducting remediation for petroleum spills or leaks.

The second part of the rulemaking deals with the emergency episode criteria. Recent smoke related events caused elevated concentrations of ambient particulates in various parts of Idaho. These ambient concentrations reached potentially unhealthful levels but did not cause an exceedance of a particulate matter national ambient air quality standard, which is based on 24-hour and annual average ambient concentrations.

In practice, Stage 1 of the Air Pollution Emergency Rule has been interpreted to apply to the 24-hour average concentration from the National Ambient Air Quality Standards (NAAQS). DEQ has determined that in order to protect the public health, action levels based on a shorter than 24-hour averaging period or other criteria such as visibility are necessary to trigger the Air Pollution Emergency Rule. This rulemaking adds one hour particulate and visibility criteria to Stage 1 of the Air Pollution Emergency Rule, and eight hour rolling averages criteria for particulate to Stages 1, 2, 3, and 4 of the Air Pollution Emergency Rule to better protect the public health from events that may contribute or cause unhealthful high ambient particulate levels in Idaho. DEQ is concerned that the current 24 hour action level may be inadequate to protect the public health in the event of severe particulate loading of the ambient air.

During the Board's worksession, two changes were made to the initial rule. Language was moved from under 556.01(a) up to 556.01 so it is applicable to both the table showing the PM levels and the table showing the visibility criteria. Additional language was added to 556.01, Stage 1 Forecasting Caution so it now reads, "A Stage 1 Forecasting Caution shall be declared by the Department when particulate concentrations or visibility attributable to particulate matter reaches or is forecasted . . ."

Jane Gorsuch, Intermountain Forest Association, submitted a comment letter on the proposed rules (see Attachment 1). She believed the proposed rules would be more stringent than the federal Clean Air Act, and therefore would be invalid and a violation of the Idaho Code. Ms. Gorsuch was concerned because the rule was not made available to the public until a few days ago. They have not had adequate time to study the rule in depth to see if it would create a difficulty for them. She feared the rule might shorten the already narrow window of time available for the forest industry to conduct slash burning and prescribed burning. Ms. Gorsuch urged the Board to withdraw the emergency rule and direct DEQ to immediately enter into negotiated rulemaking so all the potentially impacted parties would have an opportunity to comment and participate more fully.

Director Steve Allred respected the concerns of the IFA, but felt it was the Department's responsibility to proceed with the rulemaking to protect the public health. The law requires DEQ to take action if it believes there is a threat to public health. It is the Department's intent to begin negotiated rulemaking to produce a permanent rule. The rule would not become permanent until there is adequate time for study and input as to what the permanent numbers ought to be.

Paul Agidius asked when the temporary rule would sunset. Doug Conde explained the temporary rule would be replaced by the permanent rule when the Board adopted the permanent rule. The Administrative Procedures Act requires the Department to begin rulemaking on the permanent rule as soon as possible. Marti Calabretta asked if the Board could repeal the temporary rule at a later date if needed. Doug Conde confirmed the Board could rescind the rule at any time.

Lisa Kronberg clarified the rule does not enact an ambient air quality standard that is more stringent than the Clean Air Act. It sets an action level upon which DEQ can stop open burning. Ms. Gorsuch's comment letter also mentioned a few legal cases that challenged the particulate matter standards. The Supreme Court heard those cases earlier in the week and the PM 2.5 standard was not vacated by the D.C. Circuit Court and the 1987 PM10 standard is still in place. DEQ is comfortable that those are the health standards they should be looking at. She also noted the comment period for the temporary rule would start in January and suggested the negotiated rulemaking be started and notice given at the same time.

Dr. Randy MacMillan asked if data existed showing the levels of PM 2.5 and PM 10 when the forest industry is conducting slash burning. Tim Teater stated the Forest Service and DEQ run an extensive monitoring network. The data can be provided on any given day. He pointed out that the temporary rule really does not add anything new, other than the one-hour standard, which allows the Department to act more expeditiously when particulate does get high

and a public health threat is present. Steve Allred clarified the data is atmospheric data of particulate, it does not necessarily represent data of slash or prescribed burning. It would be a combination of all activities taking place in the airshed at that time.

The Board discussed a recent death, which the coroner attributed in part to inhalation of particulate matter from burning.

Senator Marguerite McLaughlin was concerned that the Department seemed to be moving away from the negotiated rulemaking process too often. Director Allred explained the Department generally conducted negotiated rulemaking, but this rule was brought forward due to the concern for public health. In such a situation, it is the Director's responsibility to recommend that the Board take action. Another issue being brought to the Board at this meeting, the Rules of Administrative Procedure before the Board, did not go through negotiated rulemaking due to time constraints. The legislature mandated the rules be submitted this session.

Marti Calabretta felt that deaths need not be documented to understand that a public health threat existed. She asked what process the Department would use to review lifting the burn ban or other actions which might be taken. Director Allred explained that Department staff continually monitor weather patterns to determine if the burn ban can be lifted. Tim Teater assured that region and state office staff monitor the situation daily or hourly as needed so they can respond in a timely manner.

Paul Agidius asked Jane Gorsuch if she would have a greater level of comfort if negotiated rulemaking were initiated at the first of the year. Ms. Gorsuch confirmed that she would.

- **MOTION:** Paul Agidius moved the Board adopt, as a temporary rule, the Rules for the Control of Air Pollution in Idaho as presented under Docket No. 58-0101-0004, with an effective date of November 10, 2000.

SECOND: Marti Calabretta

DISCUSSION: Paula Gradwohl noted the rule being acted on was "as amended and presented on November 9, 2000." Senator Marguerite McLaughlin asked for assurances that negotiated rulemaking would start soon to resolve any issues. Director Steve Allred committed to begin negotiated rulemaking as quickly as possible and to work with stakeholders to develop acceptable numbers that are protective. Dr. Joan Cloonan asked for confirmation that the motion included the short change and remediation facilities. Marti Calabretta and Chairman Chisholm confirmed that it did.

VOICE VOTE: Motion passed. 6 ayes; 0 nays; 1 absent (Nick Purdy)

**AGENDA ITEM NO. 5: RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO,
DOCKET NO. 58-0101-9905, TEMPORARY RULE**

Marjorie MartzEmerson, Air Quality Permits Program Manager, distributed a summary of the issues and results of the negotiated rulemaking. The rule deals with some contentious issues and the group was unable to reach a consensus. This rule amends the registration fees for

Tier 1 sources. In the absence of agreement, the rule establishes a “presumptive minimum” fee amount to pay for the costs of maintaining Title V program activities.

Brent Olmstead, Idaho Association of Commerce and Industry (IACI), submitted written comments and an alternative rule which they would like the to Board adopt instead of the rule presented by the Department. (See Attachment 2).

Rob Sterling, Environmental Manager for Micron Technology, testified against the rule proposed by DEQ. He stated that yesterday was the first time he or IACI had seen the issues summary and they had not reviewed it in detail. Their initial review indicates some factual errors and misrepresentations in the issues summary paper. It is a good first attempt to capture the negotiations, but it doesn’t necessarily represent the spectrum of the discussions that took place over the last year and a half. Therefore, he stated he would be very concerned if the Board relied upon that document to make a decision on the rule today. Mr. Sterling stated his support for the alternative rule proposed by IACI because it satisfied EPA requirements, DEQ’s stated objectives, and IACI’s interests. He added that in his opinion, additional negotiated rulemaking would not bring about a consensus.

Marti Calabretta asked what justification was used for requesting the temporary rule. Marjorie MartzEmerson stated the rule was originally requested as a temporary rule because they feared the fund would run out of money in fiscal year 2002. However, she now believed that changes in the assumptions and changes in requests for appropriations will prevent the fund from running out of money in FY 2002; therefore, she was not sure it still met the requirements for a temporary rule. Lisa Kronberg, Deputy Attorney General, commented that a year and a half ago the Department was concerned the program would run out of money and EPA would have to take over the program, but it sounds like accounting information now indicates that is not the case. Doug Conde, Deputy Attorney General, clarified that to enact a temporary rule that imposes a fee there has to be a finding by the governor that the fee is necessary to avoid immediate danger that justifies the imposition of the fee. Such a finding was made in this case.

Marti Calabretta observed there no longer seemed to be a condition requiring a temporary rule. This would allow time for additional negotiations to develop an acceptable rule; however, the parties involved in the negotiated rulemaking do not seem to be open to further negotiations. Brent Olmstead, IACI, confirmed they would be willing to participate in further negotiations, but they are skeptical any additional progress will be made and they may in fact go backwards. He also stressed IACI’s position that the interest money from the Title V funds be allocated to the Title V fee account. IACI members intend to vigorously pursue having the interest money allocated only to the Title V fee account.

Beth Elroy, Monsanto, attended the negotiated rulemaking and served as the chairperson of the IACI Fee Subcommittee, as well as representing Monsanto. The negotiated rulemaking lasted for about a year and a half and involved a tremendous amount of work for all involved to try to come to some resolution on a proposed fee structure. In October, DEQ halted negotiated rulemaking because they had run out of time to meet the schedule for this year’s legislative session. Industry was instructed to bring a proposal, which was the consensus of both IACI and non-IACI members, back to DEQ. They feel they have done that with the alternative rule they submitted. They have 75% consensus and feel it is not possible to achieve any higher level of

consensus. Monsanto anticipates emission reductions in the next budget cycle or two that will significantly decrease the fees they will pay. They currently pay approximately 40% of the total fees collected by DEQ. They anticipate about a 1/3 reduction, which would mean about a \$200,000 reduction in program fees. To leave the current structure in place would again put the program at risk.

Chairman Don Chisholm explained that legal process would not allow the Board to adopt the IACI proposal as a temporary rule. Some relief may be given to industry if the legislature returns the \$1.1 million in interest from the Title V program. He suggested the Board table the temporary rule proposed by DEQ, request the parties work to have the interest money returned, and submit a new proposed rule for public comment to be considered by the Board at its April meeting.

Brent Olmstead restated his understanding of the proposal was that the current fee structure would remain in place, everyone would work toward having the legislature return the \$1.1 million to the Title V fee account, in April the Board would consider a temporary rule that could possibly be IACI's proposed rule, and the May 1 payments would be made according to the new fee structure. Don Chisholm stated it could not be anticipated whether or not the Governor would approve a temporary rule, and noted the fees would be based on emissions in calendar year 2000. Brent Olmstead hesitated to commit without speaking with members, but thought it sounded like something IACI could work with. Doug Conde pointed out there would have to be a finding of immediate danger in order to allow a temporary rule to go forward in April.

Director Steve Allred stressed this is a federally imposed requirement. There is a difference of opinion as to how we must meet the federally imposed requirement (whether the amount must be physically charged or just be present in the account). If DEQ does not charge the required presumptive minimum, the Department is at risk of losing primacy of the Title V program to EPA. The result of losing primacy would be an increase from \$30 per ton to \$75 per ton. EPA has notified the Department they will be conducting an audit during the upcoming period. The presumptive minimum at this time is the total tons produced times \$34.85. That amount will go up in 2001. If EPA determines DEQ's fees are not at the presumptive minimum when they conduct the audit there is a real risk to the program.

➤ **MOTION:** Senator Marguerite McLaughlin moved the Board table the proposed Rules for the Control of Air Pollution in Idaho, Docket No. 58-0101-9905, Temporary Rule.

SECOND: Dr. Randy MacMillan

VOICE VOTE: Motion failed. 2 ayes; 2 nay (Marti Calabretta, Paul Agidius); 2 absent (Dr. Joan Cloonan, Nick Purdy); 1 abstain (Don Chisholm)

Ed Bulgin, Chief Engineer and Director of Environmental Affairs for Amalgamated Sugar Company, testified in support of the IACI proposal. Although it does not totally address all issues, he felt it was a compromise that would put some cap on the ever-increasing fees. He felt Amalgamated Sugar was paying more than their share of the fee program.

Chairman Chisholm reiterated the IACI proposal could not be adopted as a temporary rule because it had not followed the legal process (it was not approved by the Governor as

meeting the criteria to become a temporary rule and no public comment had been allowed). Rob Sterling stated it was the understanding of IACI and other industry representatives that the proposal which was drafted at the request of DEQ could be considered. Doug Conde stressed the same set of circumstances would have to apply with the rule proposed by IACI as existed with the original rule that was approved by the Governor. If the Board made a determination that the IACI rule was merely an amendment to the original rule, it could go forward. Chairman Chisholm observed that the justification for the original rule was a projected shortfall in the fee account, and the IACI proposal would reduce fees and create a further shortfall. Therefore, he didn't feel the conditions were met to justify a temporary rule.

Hugh O'Riorden, member of IACI and attorney representing Amalgamated Sugar, emphasized the IACI proposal was developed specifically to meet the needs of DEQ after the negotiated rulemaking terminated. The proposal meets two needs; it provides stability by spreading a broader base, and it meets the presumptive minimum. The IACI proposal relies upon the Title V Air Quality fund. They want to make sure the money stays in that fund and is not spent on other things. They have been told that some of the funds might be spent for permits to construct—which are not Title V. IACI does not want that to happen. Their proposal ensures the fund will have stability by protecting it from being raided.

Director Steve Allred stressed the fund had never been raided and by law could not be used for anything other than Title V activities. Records indicate the fund has only been used for permits to construct that are part of the Title V program. A new accounting system is in place that provides excellent tracking and the books are available for anyone to review. He assured that DEQ would not use Title V fees for facilities or permits that are not part of the Title V program. Director Allred urged IACI not to continue making contentions that the funds have been improperly used because it was not true.

Paul Agidius asked IACI what their preference was if their proposal could not be adopted—to keep the existing rule, or to adopt the rule currently being proposed by DEQ. Brent Olmstead stated if IACI had to choose between just those two, they would prefer to keep the existing rule, even though they feel it is not a fair, equitable, or stable funding source. He committed to continue to meet with DEQ in negotiated rulemaking no matter what went forward.

Lisa Kronberg stated she was uneasy with the proposed rule going forward as a temporary rule due to the changes in financial circumstances. In her legal opinion, an emergency no longer exists and therefore the rule does not qualify for temporary status. Miss Kronberg felt an obligation to the Governor's office because she initialed and approved the documents requesting temporary rule status, and felt she must now withdraw her approval.

➤ **MOTION:** Paul Agidius moved the Board table the proposed Rules for the Control of Air Pollution in Idaho, Docket No. 58-0101-9905, Temporary Rule.

SECOND: Marti Calabretta

VOICE VOTE: Motion passed. 6 ayes; 0 nay; 1 absent (Nick Purdy)

**AGENDA ITEM NO. 6: RULES AND STANDARDS FOR HAZARDOUS WASTE,
DOCKET NO. 58-0105-0001, PENDING RULE**

John Brueck, Hazardous Waste Regulation and Policy Coordinator for DEQ, explained this docket is a routine, annual procedure needed to maintain consistency with EPA's federal regulations implementing the Resource Conservation and Recovery Act (RCRA) as directed by Idaho's Hazardous Waste Management Act. These rules must be adopted so state rules remain consistent with federal regulations and so that Idaho can maintain primacy of the hazardous waste program. Mr. Brueck reviewed the eight changes included in the rules, most of which were technical corrections.

- **MOTION:** Dr. Randy MacMillan moved the Board adopt, as pending rules, the Rules and Standards for Hazardous Waste as presented in the final proposal under Docket No. 58-0105-0001.

SECOND: Dr. Joan Cloonan

VOICE VOTE: Motion passed. 6 ayes; 0 nay; 1 absent (Nick Purdy)

**AGENDA ITEM NO. 7: RULES FOR THE ADMINISTRATION OF WATER POLLUTION
CONTROL LOANS, DOCKET NO. 58-0112-0001, PENDING RULE**

Bill Jerrell, Loan Program Manager for DEQ, explained this rule implements legislation enacted under Senate Bill 1535. It gives DEQ authority to expand its existing wastewater treatment loan program to incorporate nonpoint source pollution problems such as agricultural runoff, effluent trading, septic tank replacement, wetland restoration and storm water control. The rule establishes a priority rating system that integrates wastewater treatment projects and nonpoint pollution projects into one list. The integrated list will be brought to the Board for its approval in the spring. Affected parties could include agriculture, cities, counties and water and sewer districts. Negotiated rulemaking was conducted with interested parties including state and federal agencies and representatives from the agricultural community.

- **MOTION:** Marti Calabretta moved the Board adopt, as pending rules, the Rules for the Administration of Water Pollution Control Loans as presented in the final proposal under Docket No. 58-0112-0001.

SECOND: Dr. Randy MacMillan

DISCUSSION: Dr. Joan Cloonan noted a grammatical error on page No. 00020, 02. Language should be changed to clarify that the projects will be ranked, not the systems. Staff will make the needed change. Dr. Randy MacMillan asked for a clarification that parties participating in the 319 program would also be eligible to participate in this program. Bill Jerrell confirmed that the program was envisioned to be a supplement to the 319 program and parties could participate in both programs.

VOICE VOTE: Motion passed. 6 ayes; 0 nay; 1 absent (Nick Purdy)

AGENDA ITEM NO. 8: RULES FOR ADMINISTRATION OF PLANNING GRANTS FOR PUBLIC DRINKING FACILITIES, DOCKET NO. 58-0122-0001, PENDING RULE

(Note: This agenda item was presented following Agenda Item 10.)

Alan Stanford, Sr. Water Quality Analyst for the DEQ Loan Program, reported this rule was adopted by the Board as a temporary rule in July 2000. At that time the Board requested certain changes to add clarity to certain sections and make it easier for the general public to understand. Mr. Stanford reviewed the changes that will make the drinking water grant program more user friendly.

➤ **MOTION:** Dr. Joan Cloonan moved the Board adopt, as pending rules, the Rules for the Administration of Planning Grants for Public Drinking Water Facilities as presented and amended in the final proposal under Docket No. 58-0122-0001.

She further moved that the Board adopt the revisions included in the final proposal as amended today as amendments to the temporary rule adopted under Docket No. 58-0122-0001 with the amendments to the temporary rules becoming effective November 10, 2000.

SECOND: Senator Marguerite McLaughlin

VOICE VOTE: Motion passed. 6 ayes; 0 nay; 1 absent (Nick Purdy)

AGENDA ITEM NO. 9: RULES OF ADMINISTRATIVE PROCEDURE BEFORE THE BOARD OF ENVIRONMENTAL QUALITY, DOCKET NO. 58-0123-0001, PENDING RULE

Darrell Early, Deputy Attorney General, explained this rulemaking is required by Idaho Code § 39-107(9), which directs the Department to promulgate contested case rules. The proposed rules include administrative procedures governing petitions to initiate rulemaking and declaratory rulings as well as contested cases. To the extent possible, the proposed rules are consistent with IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." Senate Bill 1426, the legislation which created the Department of Environmental Quality, requires the completion of the transition to department status no later than July 1, 2001. As a result of that mandated deadline, the Department initiated proposed rulemaking and did not conduct negotiated rulemaking. Public comment was taken and the initial proposal was revised as a result of the comment. A public hearing was held in Boise, Idaho on August 24, 2000. The Idaho Association of Industry and Commerce and the U.S. Department of Energy both submitted written comments. Some issues remain unresolved regarding the definition of the Board as a presiding officer, the role of the Board at contested case hearings, the burden of proof, and discovery and confidential business records.

Chairman Don Chisholm stated it was the consensus of the Board this matter should go into negotiated rulemaking to give the regulated parties a chance to comment on the structure and resolve the outstanding issues.

➤ **MOTION:** Dr. Randy MacMillan moved the Board table the Rules of Administrative before the Board of Environmental Quality, Docket No. 58-0123-0001 and direct the Department of Environmental Quality to initiate negotiated rulemaking with interested parties.

SECOND: Senator Marguerite McLaughlin

VOICE VOTE: Motion passed. 6 ayes; 0 nay; 1 absent (Nick Purdy)

Director Steve Allred noted the Department usually conducts negotiated rulemaking; however, these are the Board's rules and it is difficult for the Department to negotiate on the Board's behalf when the rules cover the Department. He strongly suggested the Board be directly involved in the negotiations. Marti Calabretta also felt the Board should be involved to ensure its concerns are addressed. The process need not include all Board members, but should allow for feedback.

AGENDA ITEM NO. 10: **LEGISLATIVE CHANGES AFFECTING ADMINISTRATIVE RULES OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY, DOCKET NO. 58-0100-0002, PENDING RULE**

Darrell Early advised it might not be prudent to go forward with this rulemaking since the previous docket, Rules of Administrative Procedure before the Board of Environmental Quality, Docket No. 58-0123-0001, had been tabled. The purpose of this rule docket is to update all administrative rules of DEQ so the rules refer to the previous docket No. 58-0123-0001, and the Rules Governing the Protection and Disclosure of Records in the Possession of the Department of Environmental Quality, rather than the Department of Health and Welfare's Rules for Administrative Procedure and Confidentiality of Records. DEQ can continue to operate under the existing rules until the Rules of Administrative Procedure before the Board can be adopted.

➤ **MOTION:** Dr. Joan Cloonan moved the Board table the Legislative Changes Affecting Administrative Rules of the Department of Environmental Quality, Docket No. 58-0100-0002.

SECOND: Dr. Randy MacMillian

VOICE VOTE: Motion passed. 6 ayes; 0 nay; 1 absent (Nick Purdy)

Chairman Chisholm asked legal counsel if they had a clear enough idea of the Board's concerns on the Rules of Administrative Procedure before the Board to proceed to negotiated rulemaking, or if a subcommittee or representative of the Board should be appointed to handle the matter. Doug Conde was confident they had adequate direction to prepare a draft rule as a starting point to begin negotiated rulemaking. He suggested a Board member be appointed to take part in the negotiated rulemaking. Mr. Conde felt comfortable he understood the concerns of the Board and IACI and thought they would be able to develop an acceptable rule within a fairly short timeframe.

Chairman Chisholm asked if the draft rule could be prepared by February 2000 and what the timeline would be for the rulemaking. Doug Conde stated the draft could be ready and the negotiated rulemaking notice could probably be published in January. The proposed rule would have to wait until after the legislative moratorium ends, so it will probably be published in the May administrative rules bulletin. The rule would then be ready to come before the Board at its October 2001 meeting.

Marti Calabretta requested status reports be scheduled on subsequent Board agendas to allow members to track progress and provide feedback. Dr. Joan Cloonan volunteered to serve

as a representative for the negotiated rulemaking. Don Chisholm and Paul Agidius will also attend as their schedules permit. Chairman Chisholm commented that other Board members were also welcome take part as their schedules permitted.

Director Steve Allred advised that negotiations could be conducted without going through the time-consuming official negotiated rulemaking process. Doug Conde advised they could work from the current proposed rule that has been published as long as the changes made to the rule are within the scope of the original notice. Chairman Chisholm confirmed the changes would be within the scope of the original notice. Dr. Joan Cloonan suggested the public comment period be extended to allow for additional comments.

The Board agreed to proceed with informal negotiations as stated on the Rules of Administrative Procedure before the Board. This should allow the Department to bring the rule back to the Board at its April or June 2001 meeting.

AGENDA ITEM NO. 11: WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS, DOCKET NO. 58-0102-0002, PENDING RULE

Chris Mebane, Water Quality Analyst, DEQ, presented this rulemaking which proposes the addition of new designations to catalog waters in the state. New designations include temperature criteria to protect fish, site-specific standards for Pat Hughes and Buckskin Creeks, and minor corrections. Mr. Mebane explained the changes in detail and discussed why they were needed. Some revisions were made to the original proposal. The rule originally was to include variances for the communities of Mullan, Page, and Smeltonville for meeting water quality standards in the South Fork of the Coeur d'Alene River for metals; however, DEQ was unable to complete an analysis that is needed to document the need for the variances. The analysis will be completed as soon as possible and the variances will be brought back to the Board as a temporary rule at the earliest opportunity.

Marti Calabretta questioned the effect and results of a variance. Her community is currently going through a process to provide funding for projects to drive down the metals load in the entire system. If a variance means entities would not be looking for grants and other ways of helping them meet the criteria of their permit, it may be a bad idea because it would discourage entities from taking care of a problem when there are funds available. Chris Mebane explained that was neither the intent nor effect of a variance. The primary reason for a variance is to allow more than five years for the permitted source to meet the effluent limits placed on them. At the end of five years, the discharger has to either comply with the standard or ask for a new variance, and in order to receive a new variance, they have to show reasonable progress towards meeting the standards. It sometimes takes longer than five years to obtain funding and complete the project to allow them to meet the standards. He stressed that a variance is not an exemption or waiver, merely an extension.

Cold water biota designations for Canyon Creek and the South Fork of the Coeur d'Alene River were also withdrawn from the rule because it was felt they would not be needed until such time as the variances can be brought back to the Board. Marti Calabretta asked to meet with Chris Mebane to discuss the cold water biota designation for Canyon Creek and the South Fork of the Coeur d'Alene River before those items come before the Board for action.

Public comment was taken regarding the proposed rule and DEQ revised the initial proposal. A public hearing was held in Boise, Idaho on September 13, 2000.

Dallas Gudgeon, ICL, commented on three issues in the proposed rules. The ICL feels the variance on the South Fork of the Coeur d'Alene River and Canyon Creek is premature. As we move towards clean up, they would like to see the current designated use achieved and fully supported before we start allowing variances. This variance was removed from the rules with the revisions presented today, but the Department intends to bring it back to the Board again. The second issue involves the designation of the Little Camas to seasonal cold water use designation. The ICL vigorously opposed this in the rulemaking in the legislature last year. He requested the Board not go forward with this use designation, noting the EPA has not approved it. They are concerned this may cause somewhat of an open door for designating sources incorrectly and feel it is premature until the EPA has reviewed and approved it. Lastly, the ICL testified against the change in the Bull Trout temperature standard. This also appears to be premature because EPA has not completely reviewed it for technical merits. Also, as presented today, the rule does not have the weekly maximum of 14°, which ICL feels will be required by EPA.

Chris Mebane discussed the definition of the seasonal cold use designation and stated it would be used fairly infrequently. He noted that most waters in the state belong in a cold water category. EPA has not provided detailed comments on the Bull Trout temperature criteria, but a similar 12° daily average is already on the books. EPA has had the rules since 1997 and has not taken action. They have indicated that time constraints will not allow them to comment on them for another year or so.

Jane Gorsuch, IFA, testified in support of the change to the Bull Trout temperature criteria. IFA reviewed and fully supported the proposed change from a 12° daily average to a 13° maximum temperature. The 14° change was not in the original proposal; therefore, IFA supports the revised proposal as presented.

➤ **MOTION:** Marguerite McLaughlin moved the Board adopt, as pending rules with the attached amendments, the Water Quality Standards and Wastewater Treatment Requirements as presented in the final proposal under Docket No. 58-0102-0002.

SECOND: Paul Agidius

VOICE VOTE: Motion passed. 6 ayes; 0 nays; 1 absent (Nick Purdy).

AGENDA ITEM NO. 12: WORKING LUNCHEON WITH THE DRINKING WATER ADVISORY COMMITTEE

The Board of Environmental Quality met with the Drinking Water Advisory Committee for introductions and a presentation on the purpose and functions of the Committee. Kirk Miller, Committee Vice-chairman, thanked Director Steve Allred for his expertise, advice and service. He stated the Committee members appreciated all the effort Mr. Allred had put into making DEQ a more effective agency. He also noted that the Committee's relationship with the Department had greatly improved since Mr. Allred became DEQ director.

AGENDA ITEM NO. 13:

**OUTSTANDING RESOURCE WATERS – REVIEW OF DRAFT
REPORTS TO BE SENT TO THE IDAHO LEGISLATURE**

David Mabe, Administrator, Water Quality Division, distributed two reports for the Board's review: Monitoring Plan for Outstanding Resource Waters and Managing Water Quality Under Proposed ORW Designations for the Middle Fork of the Salmon and Selway Rivers. One report is on determining the baseline of water quality; the other on the Best Management Practices (BMPs) that might be applicable in an ORW and potential socio-economic impacts of an ORW designation. Both reports are in draft form and staff does not recommend their adoption at this time. Work still needs to be done with various stakeholder groups before the reports are final. Staff will continue to work on the reports and bring them back to the Board in January for final approval and adoption.

The Outfitters and Guides Association, the Outfitters and Guides Licensing Board, the Forest Service, Idaho Department of Fish and Game, and the Department of Lands were all consulted to gain information in the preparation of the reports. Those groups have not had an opportunity to review the draft reports and provide comments. The interim period between now and January 2001 will be used to gain that feedback.

David Mabe reported the Board's motion nominating the two stream segments as ORWs and the legal descriptions did not line up as intended. It was intended that all areas nominated be within wilderness boundaries. Upon closer examination, two anomalies were found. The road and the portion of the Selway River from Magruder Corridor to the Paradise campground are not within the boundaries of the wilderness area. Therefore, the upper border of the designation was shifted to be in compliance with the Board's motion. The second issue involved two places on the Middle Fork Salmon River. A small segment of Sulfer Creek at the headwaters and some "cherry-stemed" roads on Loon Creek also appear to be outside the wilderness boundaries. Staff will revise the boundaries as needed and prepare corrected maps to ensure a correct interpretation of the Board's motion for the final report.

David Mabe reviewed and discussed the BMPs. Marti Calabretta pointed out that in the report on Page 9, paragraphs 5 and 6 and Page 10 paragraph 4, it gives a mixed message on the designated agency. The Board's motion clearly stated the Department of Environmental Quality should be the designated agency. David Mabe pointed out that the Idaho Code provides that where an agency is not designated, the designated agency is DEQ. Ms. Calabretta requested staff ensure the language is consistent and more strongly reinforces that the Department of Environmental Quality is the designated agency for developing BMPs. She observed this has been a worthwhile and valuable process because it has brought all the rules and BMPs together in one place and has designated a lead agency.

Grant Simonds, Outfitters and Guides, felt it should be recognized that while other agencies, such as DEQ, Fish & Game, the Forest Service, etc. should lead the way in the development of the BMPs; the Outfitters and Guides Licensing Board, an agency which has been in place since the 1960's and understands the regulation of the industry, should be the designated agency for the enforcement of BMPs. They are not interested in another layer of regulation. Board members discussed how regulation and enforcement should be accomplished.

Marti Calabretta stated it was her understanding that DEQ would be the lead (designated) agency relying on other agencies and industries to monitor and enforce the BMPs which affect their areas. DEQ would "lead" and bring all the pieces together and ensure each agency understands what their role is specifically for their part of the impact. If an agency were not enforcing its BMPs properly, it would be DEQ's responsibility to bring it into compliance. David Mabe agreed with Ms. Calabretta's comments and stated he would try to clarify the issue in the report.

Senator Marguerite McLaughlin expressed concern that the maps were not technically accurate and didn't show all access roads and trails being used by the public. She felt the Board should look at this issue closely to ensure it did not limit the public's access. David Mabe stated the final report would include updated maps that show more detail and more closely reflect the Board's motion.

Michael McIntyre reviewed the "Monitoring Plan for Outstanding Resource Waters" report. The report presents a proposal on how DEQ plans to monitor water quality in the ORWs and how they propose to describe water quality and determine a baseline. They anticipate monitoring for the first three years, then every third year or as conditions warrant. This will allow DEQ to develop a base of information to characterize the water quality. DEQ believes there is enough information to characterize it this year, but as more information is added it can become more site specific. Four types of monitoring are proposed: biological, chemical, physical monitoring of temperature, and monitoring of human activity.

Marti Calabretta discussed DEQ's role in setting limits on activities and monitoring. Michael McIntyre clarified that DEQ would not in any way set limits on activities, they would merely be a reviewing agency monitoring changes and providing comments as needed. Ms. Calabretta suggested a "Biological Monitoring" subheading be added to Page 4, after paragraph 1.

Dr. Randy MacMillan discussed the need to justify the value of an ORW to the legislature in a format they can understand and appreciate. He noted the report states the current BMPs and federal requirements already protect the water quality and degradation is not likely. It further indicates that monitoring will take place, which will cost staff time and dollars. He felt the legislature would not support the ORW nominations without additional justification and documentation for the need. Senator Marguerite McLaughlin commented she had met with several groups recently who were very interested in the ORWs and were monitoring the process. She felt DEQ and the Board should be working with those groups to address their concerns. Senator McLaughlin believed the ORWs would not have a chance in the legislature if there were strong local opposition. She stated the people in the region had already gone a long way to provide protection for the nominated rivers. Senator McLaughlin believed those rivers were already adequately protected and the Board should be focusing on rivers that really needed protection.

Director Steve Allred observed there might be ways to address the Board's concerns. It might be possible to add an additional process to the final recommendation that would involve gathering local input before a final decision is made. Legal staff would need to review all options. Chairman Chisholm felt a good option might be for the legislature to give notice they

were considering certain designations and then direct DEQ to hold public hearings at specific sites. The reports on the public hearings could then go back to the legislature for their final decision. Dr. Randy MacMillan stated he agreed with Director Allred's comments and felt the Board should develop a sound strategy to move the ORW process forward and develop a better procedure. He commented it was crucial for the ORW nominations to have very sound justification to get through the legislature and felt the Board would do itself a disservice to not think the process through all the way.

David Mabe noted DEQ intended to use the time before the January 2000 meeting to circulate the two reports broadly and work to resolve the concerns of other interests. Final versions of the reports will be supplied to Board members prior to the meeting for their review and recommendations.

AGENDA ITEM NO. 14

**PROPOSED LEGISLATION REVISING THE OUTSTANDING
RESOURCE WATERS NOMINATION PROCESS**

David Mabe reviewed draft legislation (Attachment 3) to make changes to the ORW nomination process. The legislation would not affect the current nominations. The changes would allow for more legislative input into the potential decisions the Board is faced with on how to focus potential designations for additional studies, and allow for additional time for completing those studies.

Dallas Gudgell, Idaho Conservation League, stated the ICL could not support the proposed legislation as it is currently written. He felt it was not necessary, and the changes that need to be made could be done without the legislative process. The two initial concerns which brought about discussions of changing the ORW process (because they seemed to be the main stumbling blocks in getting ORWs through the legislature) were: 1) what are the BMPs, and 2) how do you set the water quality standard at its existing level. The process DEQ is using with the current nominations is addressing both concerns quite well. It appears to be a good time to go forward with the nominations. Nothing has changed since the last nominations, and all of the constituency groups who were on board with the ORWs in 1997 appear to still be on board this year. The nominations are almost identical, in fact much reduced.

He feared that if the Board went forward with the nominations and the legislation changing the process at the same time, it might hurt the chances for the success of the nominations. The efforts of the Board and DEQ would then be wasted. He believed for the ORW nominations to be successful, the Board must want to protect water quality and fully support the nominations. He was concerned that the Board seemed to be going at it from the wrong direction—instead of discussing ways to be successful at protecting the water, they seemed to be trying to find ways to get around it.

Don Chisholm commented the Board could not lobby for any particular side and had to maintain a level of neutrality and openness to competing ideas. If the Board becomes an advocate for a certain side of an environmental issue, it will create problems for itself in trying to handle the issues. The Board is trying to analyze the legislative process, how it could be successful, and how to determine water quality levels and how to set up a system to monitor the water quality. Director Chisholm felt it was asking too much to expect the Board to also act as a

lobbying group for the project in light of its broad range of responsibilities and need to maintain credibility with all interest groups and individuals.

Dallas Gudgell felt there were two levels. He agreed there is an initial level before a decision is made where the Board must remain impartial and hear all sides; but once the Board makes a decision, it should have some level of confidence in the decision and be willing to bring it forward. He believed it was entirely appropriate for the Board to support its ORW nominations, once made. The ICL will do everything it can to build support for the ORWs and bring other constituencies on board. He noted the Board of Health of Welfare had a "cheerleader" in the legislature for its nominations in 1997.

Senator Marguerite McLaughlin suggested Mr. Gudgell meet with the chamber of commerce in three or four of the small towns in the affected area and see what the local people think. Mr. Gudgell agreed that was a good idea and noted that the ICL had requested public hearings in those areas.

Don Chisholm pointed out one of the things the Board was trying to accomplish with the proposed legislation was to get better direction from the legislature so the Board and the Department could make the best use of their resources. Mr. Chisholm asked if it was ICL's preference that the proposed legislation not be submitted and the Board go forward with the ORW nominations as adopted in the Board's October 2000 meeting. Dallas Gudgell confirmed that was ICL's preference. He stated he understood the resource allocations issues, but felt bringing anti-degradation forward was helping the department. The recent emphasis on TMDLs is good, but both tracks need to happen simultaneously. The ICL is sensitive to the impacts such actions have on the Department's resources and takes that into consideration.

Don Chisholm asked if the ICL would consider making a commitment to not submit any nominations next year if the Board withheld the legislation. Mr. Gudgell commented that was a compromise they might be willing to make. The issue than concerns them the most in the proposed legislation is moving the responsibility of deciding what goes forward as a nomination from the Board to the legislature.

Marti Calabretta commented it was her observation during her years as a legislator, that in order to be successful, you must be aware of what moves the legislators' hearts. When the ORWs were before the legislature when she was in office, it was the individuals not the constituent groups who came forward and moved the legislature. The local people are concerned about recreation and access issues and how it will effect their daily lives.

Paul Agidius believed the Board should look at the long term and take action to better revise the system so there will be a better chance of getting waters designated in the future.

Jane Gorsuch, Intermountain Forest Association, stated she had not had an opportunity to review the proposed legislation, but it sounded like something the IFA could support. She urged the Board to move forward with the proposed legislation.

Brent Olmstead, IACI, reported their Public Affairs Committee adopted a policy last week that promotes legislation to change the process under which ORWs are designated. He had

not closely reviewed the Board's proposed legislation, but stated it seems to follow their policy quite well. The IACI Board of Directors has not adopted their policy yet, but he felt confident IACI would be supportive of the Board's proposed legislation. Marti Calabretta asked what IACI's goal was in changing the process. Mr. Olmstead stated IACI was concerned that DEQ's efforts were being thwarted in the legislature and felt it would be a wiser use of resources to have the direction from the legislature prior to the Department expending its resources. They see no political reality in getting an ORW past the House Resources Committee. If it starts in the legislature, there would be more of a commitment from that committee to actually designate a stream as an ORW.

Norm Semanko, Idaho Water Users Association, supported the proposed legislation moving forward to address some of the issues. He felt it was healthy to revisit legislation that has been on the books for awhile.

Grant Simonds, Outfitters and Guides, commented that ten years of futility seemed to indicate that revisions are needed. He felt there was somewhat of a "horse and buggy" situation that needed to be corrected and felt the proposed legislation made sense. He supported having the BMPs and the baseline water quality information available up front in the process.

Paul Agidius suggested the following changes to the proposed legislation: 1) the complete list should not be submitted to the legislature—the Board should trim it down if needed to what it thinks is appropriate. He felt this was important because the legislature has charged the Board with this responsibility; and 2) After the ORWs receive the initial approval of the legislature, the Board should go through the whole process including going into the communities and holding public hearings to resolve the issues. All information could then be submitted to the legislature for final approval in one package including the final report and recommendations, the BMPs and the baseline water quality data.

Dr. Joan Cloonan felt the legislation should indicate what process or criteria would be used to trim down an ORW petition. Don Chisholm favored sending the entire list to the legislature and letting them indicate which water bodies should move forward. This would prevent the Board and DEQ from being tied up in a time-consuming, costly process that appears to be futile. Doug Conde indicated that criteria and a process already exist in the water quality standards. It could be amended to reflect a new statutory provision or put directly into statute to add more definition.

Dr. Randy MacMillian thought the entire list should be submitted to the legislature for consideration along with a report from the Board with its recommendations. The legislature could then designate any of the waters included in the petition for further study. All water bodies would then have an opportunity to succeed, but the Board would still be able to provide recommendations based on preliminary review.

Dr. Joan Cloonan noted the proposed change would add a year to the process, but if it resulted in a list of ORW nominations the legislature would seriously consider designating, it would be worth it.

Chairman Chisholm reviewed the changes the Board agreed to in the second section of the proposed legislation: the Board will review the final nominating report and make a final recommendation to the legislature after public comment and hearing regarding ORWs for the waters discussed in the report. Doug Conde suggested the addition of a final sentence stating, "the legislature shall determine by law those water bodies to designate." Dr. Randy MacMillan suggested the deadline for submitting ORW nominations be changed to on or before July 1.

➤ **MOTION:** Paul Agidius moved the Board propose the ORW legislation with the discussed modifications.

SECOND: Dr. Joan Cloonan

DISCUSSION: Dr. Randy MacMillan asked for a review of all changes to the draft legislation. Doug Conde listed the following changes: 1) the first sentence will be "On or before July 1..."; 2) the last sentence of the first paragraph will read, "The legislature shall determine by law which such water bodies for which the director shall prepare a final nominating report."; 3) the second paragraph, last sentence would read, "The Board shall review the final nominating report, make a final recommendation to the legislature regarding Outstanding Resource Water status for the waters discussed in the report after public notice and comment."; and 4) a final sentence will be added saying, "The legislature shall determine by law those water bodies to designate as Outstanding Resource Waters."

Director Steve Allred feared the proposed legislation would not increase the chance of an ORW being approved by the legislature. In fact, it may decrease the impetus on the legislature to approve an ORW. From the standpoint of credibility and efficiency of government, it doesn't make sense to have a law we feel the legislature will never implement. But if this proposed legislation would not increase the chance of getting an ORW designated, then all it accomplishes is passing off the determination by the Board. He stated he did not have an answer to this frustrating issue and stressed his concern that the legislation would not help the ORW process—it would help the agency, but not the process. He discussed possible alternatives such as asking the legislature to address the problem through an interim committee. If the Board decides to go forward with the legislation, Director Allred vowed to carry the legislation and work with the interest groups to try to find a solution.

VOICE VOTE: Motion passed. 6 ayes; 0 nays; 1 absent (Purdy).

The meeting adjourned at 5:15 p.m.



Donald J. Chisholm, Chairman



Marti Calabretta, Secretary



Debra L. Cline, Administrative Assistant
and Recorder



November 9, 2000.

Board of Environmental Quality
State of Idaho
Department of Environmental Quality
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Boise, ID 83706-1255

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Dear Board Members:

On behalf of the member businesses of the Intermountain Forest Association I would like to present the following information regarding temporary rulemaking, 58-0101-0004 currently before the Board.

To the extent that the new rule is more stringent than the federal Clean Air Act (CAA), it is invalid and a violation of the Idaho Code. Idaho Code requires legislative approval by statute before a federal CAA requirement can be made more stringent in Idaho. The policy underlying this provision protects the public from excessive executive agency actions and retains in the legislature the decision to make more stringent requirements.

Also, last year, the District of Columbia Circuit Court vacated and remanded certain of the Environmental Protection Agency's (EPA) particulate standards (dealing with PM 10) back to EPA. The case concerning the rules was argued on Monday, November 6 in the U.S. Supreme Court. It is inappropriate for Idaho to be basing rules on federal requirements that have been invalidated by a federal court and are the subject of ongoing litigation.

The proposal to enact the new emergency requirements in the manner DEQ has proposed violates the Administrative Procedure Act preference for negotiated rulemaking. This is the latest in a series of examples of disregard for this legislative directive.

Finally, there is no evidence in the record (since there has been no public comment period) indicating that the proposal is justified and would accomplish any public health benefits. The Department of Environmental Quality (DEQ) did not cite public health as the reason for using the temporary rule process. It cited no room in the rulemaking schedule, which is not a statutory basis for a temporary rule. As a general proposition, the Board should not be making law by temporary rule except in extraordinary circumstances.

We urge the Board to direct DEQ to withdraw the emergency rule and direct them to immediately begin a negotiated rulemaking that allows potentially affected parties the opportunity to provide adequate input.

Thank you for your interest in this matter.

Sincerely,

Jane Gorsuch
Jane A. Gorsuch
Vice President
Idaho Affairs

ATTACHMENT 1



The Voice of Business in Idaho[®]

November 9, 2000

Donald J. Chisholm
Chairman
Idaho Board of Environmental Quality

RE: Rules for the Control of Air Pollution in Idaho, Docket No. 58-0101-9905.

Dear Chairman Chisholm:

I am writing on behalf of the Idaho Association of Commerce and Industry (IACI) to request that the Idaho Board of Environmental Quality approve the Title V Air Fee Structure proposed by IACI at your November 9, 2000 meeting. I have attached a proposed rule to implement the IACI fee structure which was circulated to the Board at the Wednesday, November 8, 2000 workshop.

Because of time constraints at the November 8, 2000 workshop, IACI was unable to describe the significant time and effort that went into developing this fee structure. The IACI proposal is the result of over a year and a half of negotiated rulemaking with IDEQ and separate negotiations with approximately 43 of the potentially affected 66 stationary sources. This is truly a consensus proposal and a result of a significant amount of work. The IACI fee proposal is designed to meet IDEQ's goal to achieve presumptive minimum funding and to provide a stable basis for Title V funding.

During the workshop, Steve Allred, Director of IDEQ suggested that the IACI proposal was close to meeting IDEQ's needs, but because of shortness of time, consideration should be postponed for another year. The members of IACI respectfully disagree. Considerable time has been spent in developing this proposal and we feel that another year will not make a difference in the final outcome. Any postponement on this issue will negate the countless hours already expended and it is highly unlikely to that a consensus agreement would be the end result.

IACI requests that its proposed fee schedule be implemented for a two-year trial period. As our committee chair, Rob Sterling pointed out during the workshop, the proposal meets the presumptive minimum and will utilize the Idaho Air Quality Permitting Fund to make up any shortfall in reaching the presumptive minimum or to hold any cash which exceeds the presumptive minimum. This two year time period will allow IDEQ to develop an accounting

Chairman Chisholm
November 9, 2000
Page 2

system to detail actual costs of the air fee program. IACI then will enter into the negotiated rulemaking based upon this information.

There is no legal impediment to the IACI proposal. I.C. § 39-118(D) specifically provides that all monies from air fees must be paid to the Idaho Air Quality Permitting Fund, and in fact, provides that these monies and "all interest" shall be "kept" in the fund and shall be expended on the program. I also note that I.C. § 39-119 allows the IDEQ to collect fees for services rendered by the Department.

IACI has researched the Clean Air Act and regulations establishing the fee program. As early as 1991, EPA regulations at 56 FR. 21712 (May 10, 1991) provided that states should have "enabling legislation" that granted sufficient legal authority and flexibility to manage fee structures. The final rule in 57 FR. 32250 (July 21, 1992) again reiterated the states' discretion in its fee program. I.C. § 39-118(D) is the enabling legislation that allows the IACI proposal to be implemented.

IACI is proposing a fee program which is the result of a significant amount of work and consensus of the business community directly affected by the fee structure, and which takes advantage of the stability offered by the current 1.1 million dollar surplus in the air fund account. This is a reasonable solution, it is consensus based, and needs to be given serious consideration by the Board.

We appreciate your attention to this matter and remain willing to answer any questions you may have.

Very truly yours,



Brent Olmstead
IACI

CC: IDEQ Board
Steve Allred
Marjorie MartzEmerson

TACI
proposal

TITLE V PROGRAM BACKGROUND AND ISSUE SUMMARY

1. Title V Program

1.1 History and Purpose

The Clean Air Act Amendments of 1990 specifically focused on areas where air quality improvements had traditionally failed over the years. Prior to the 1990 amendments, there was no explicit federal requirement for sources of air pollution to obtain operating permits. A very important element of the 1990 Amendments was the Title V permitting program established to impose a more rigorous regime on the most significant air emission sources to better determine the types and quantities of pollutants emitted each year and to more effectively organize and thereby enforce the requirements applicable to each source.

1.2 Elements of the Title V Program

Congress required states to apply for administering the Title V program rather than providing the option to have permits issued to sources solely by the Environmental Protection Agency. Each state Title V program is required to have, at a minimum, the following major elements:

- Requirements for permit applications, including standard application forms and criteria for determining completeness of the application in a timely manner, and procedures for processing such applications, and for public notice and opportunity for public comment.
- Monitoring and reporting requirements for each permit
- Requirements that each source subject to a permit pay an annual fee sufficient to cover all "reasonable" direct and indirect costs required to develop and administer the permit program requirements of Title V
- Requirements for adequate personnel and funding to administer the program
- Requirements to issue and renew permits, and ensure compliance with each applicable standard, emission limitation, regulation, or requirement of Title V.

1.3 Regulated Sources under the Title V Program

Title V sources include the following:

- Any source located at any major facility (any facility which emits, or has the potential to emit, 100 tons per year or more of any regulated air pollutant, 10 tons per year or more of any hazardous air pollutant [HAP], or 25 tons per year or more of any combination of HAPs)
- Any source, including an area source, subject to a standard, limitation, or other requirement under the New Source Performance Standards (NSPS) or the National Emission Standards for Hazardous Air Pollutants (NESHAPs). Area sources, those sources not located at major facilities, may be deferred until 2005 through registration.
- Any Phase II source
- Any source in a category designated by the Department

1.4 Synthetic Minors

The Potential to Emit (PTE) is the maximum capacity of a facility to emit an air pollutant under its physical and operational design. The PTE may be reduced through any physical or operational limitation on the capacity of the facility to emit provided that the limitation or its effect on emissions is federally enforceable. Potential Title V facilities may choose to reduce their potential to emit and thereby be removed from the Title V program through establishing federally enforceable limits below major facility thresholds in a permit. Facilities that operate in accordance with the reduced limits are classified as synthetic minors.

2. Title V Fees

2.1 Mandatory Elements to be Covered by Title V Fees

Annual fees shall be sufficient to cover all direct and indirect costs, including the reasonable costs of:

- Reviewing and acting upon an application for a permit, permit revision, or permit renewal
- Implementing and enforcing the terms and conditions of any permit (not including court costs), including adequate resources to determine which sources are subject to the program
- Emissions and ambient monitoring
- Preparing generally applicable regulations or guidance regarding the permit program, its implementation, or enforcement
- Modeling, analyses, and demonstrations
- Preparing inventories and tracking emissions
- General administrative costs of running the program, including supporting and tracking permit applications, compliance certifications, and data entry
- Providing direct and indirect support to sources under the Small Business Stationary Source Technical and Environmental Compliance Assistance Program

2.2 Presumptive Minimum

The Administrator shall not approve a state program unless the State demonstrates that the program will result in the collection of, in the aggregate from all sources subject to the permitting requirements, an amount not less than \$25 per ton of each regulated pollutant (volatile organic compounds (VOCs), each pollutant regulated under the NSPS and the NESHAPs, and each pollutant for which a primary National Ambient Air Quality Standards (NAAQS) excluding carbon monoxide, has been promulgated. The fee calculated shall be increased, consistent with the need to cover reasonable costs, by the percentage, if any, by which the Consumer Price Index (CPI) exceeds the CPI for calendar year 1989. The current presumptive minimum fee, based on the CPI increase for the year beginning September 1, 2000 and ending August 31, 2001, is \$34.85 per ton.

In determining the aggregated fee amount, the permitting authority is not required to include the amount of a regulated pollutant emitted by any source in excess of 4000 tons per year of that

regulated pollutant. The required minimum shall not apply if the permitting authority demonstrates that collecting an amount less than the minimum amount will meet all of the requirements.

The list of regulated pollutants for determining annual fees is quite long. Historically, the State of Idaho has opted to include only a few of the regulated pollutants in establishing a fee structure (currently VOCs, sulfur oxides, nitrogen oxides, particulate matter, and radionuclides) in lieu of establishing an emission cap of 4000 tons per pollutant per source. The current annual registration fee is \$30 per ton of criteria pollutants and \$5 per curie for radionuclides.

The presumptive minimum amount, therefore, varies with the Statewide air emissions of pollutants from regulated sources each year. The current estimated actual emissions by all regulated sources are approximately 45,739 tons (based on 2000 reported emissions) to 47,282 tons (based on IACI data) for Title V sources, excluding probable synthetic minors. The presumptive minimum aggregated fee amount for 2001 is estimated at approximately \$1.6M.

A workload estimate was provided to the rulemaking group, based on 63 current Title V facilities and using unit cost data and estimates from FY00. The projections showed a Title V fee cost (excluding EOMA) of \$2.8M. The workload estimate was updated, based on 56 current Title V facilities and the modified Title V permit fee schedule but using the same unit costs. The updated projection showed a Title V fee cost (excluding EOMA) of \$2.3M. The workload estimates are attached. It was concluded that better cost accounting was needed and more experience with final Title V permits and modifications was necessary before a realistic demonstration could be made that the Title V program could be effectively implemented at less than presumptive minimum cost.

2.3 Fee Structure

The presumptive minimum fee structure is based on the principle of a user fee for pollution. Sources that consume the air resources of the State would be required to pay for the administration of the Title V program. Facilities would be required to evaluate and record actual emissions, paying fees directly related to all actual emissions. The goal of user fees is to encourage the control of emissions, reduce the concentrations of ambient pollutants, and promote protection of human health and the environment.

The user fee for pollution principle does not, however, preclude the implementation of other fee structures should the permitting authority determine that other structures could achieve the goals and requirements of Title V.

3. Fees Rulemaking

3.1 Historical

The Title V fees rulemaking activities were initiated more than a year ago to increase the fee account and balance the fee collections with projected annual appropriations of \$2.3M to \$2.9M. The current rules create an air quality permit fee account that funds a mixture of Title V program activities (at Tier 1 sources) with non-Title V activities (at both Tier 1 and Tier 2 synthetic minor sources). New source review for Tier 1 sources has historically been funded out of the fee account. New source review is not a Title V fee mandatory activity. Early in the summer, the rulemaking group made a recommendation that new source review costs be taken

out of the fee fund and that separate fees be collected, on a fee for service basis, for all (major and minor) new source review. The scope of the rulemaking was expanded, through public notice, to include discussions of non-Title V fee options.

3.2 Issues

The rulemaking group spent more than a year on fee-related issues without being able to reach consensus on a fee structure. The group disbanded after running out of time for completion of the rulemaking schedule on October 3. The key areas of disagreement are:

- (a) **Amount of fee money to be collected.** DEQ recommends that we follow the presumptive minimum set by law since, at this time, we cannot reliably demonstrate that the Title V program can be implemented in the State of Idaho for less than presumptive minimum. Some members of the rulemaking group recommended that DEQ provide a detailed proposal that could be used by the group to approve or disapprove program activities and costs.
- (b) **Balancing fee collections and expenditures.** The rulemaking group recommends that balancing fee collections with annual expenditures be postponed as long as excess money is available in the fund.
- (c) **Synthetic minor fees.** DEQ, based on legal input from the AG's office, recommends that synthetic minors, once they have been issued a permit with an enforceable limit and are thereby no longer Title V sources, be separated from the Title V fee fund since legally fees collected from non-Title V sources cannot be used to pay for Title V activities. Mixed fees in one fund makes fee fund auditing extremely difficult. Programmatically, inclusion of synthetic minor source activities would raise costs well above the presumptive minimum level. The actual number of synthetic minor sources is not currently known, since many of these sources have never been included in the Title V program. The IACI proposal recommends that synthetic minors pay fees towards the Title V presumptive minimum.
- (d) **Fee for service.** DEQ recommends that a consistent, predictable appropriation be provided to maintain resources (permitting and compliance) to implement the program as required by law. Fee for renewal service is not applicable until FY04.
- (e) **Distribution of fees among Title V participants.** The rulemaking group and the Tier I sources have not reached consensus on a fee structure. DEQ recommends that any fee structure include both incentive to reduce emissions and to prevent an undue burden on small sources.
- (f) **Expand the list of regulated pollutants.** DEQ recommends that further evaluation be done to consider expanding the Idaho list of regulated pollutants to other Title V regulated pollutants and broaden the fee base.

The key areas of agreement are:

- (a) **Separate Title V program activities.** DEQ and the rulemaking group reached consensus that activities that are not required to be paid out of Title V fees be removed from the Title V fee account and other funding sources be developed for implementation of these activities. New source review for both major and minor facilities should be considered outside of the context of Title V.
- (b) **Fees for PTCs and Tier 2 permits.** DEQ recommends that revisions to the rules that streamline and clarify the permitting program be completed before developing a final

permitting fee proposal. Many participants in the rulemaking group indicated that they are uncomfortable with a fee structure when they are not sure how some definitions, including the requirements under evaluation in the rock crusher project, will be resolved. This, however, leaves the PTC and Tier 2 permitting programs significantly underfunded.

4. Potential Options

- (a) Draft temporary rule. Defaults to presumptive minimum on a fee per ton basis as defined by the Clean Air Act.
- (b) Defer fee rulemaking. Retain current fee rules at \$30 per ton of regulated pollutants, \$5 per curies of radionuclides, and \$500 fee for issuance of a Tier 2 synthetic minor permit.
- (c) Begin formal rulemaking. Begin formal rulemaking and initiate a proposal for public comment.

WORKLOAD ESTIMATE FOR TITLE V FEES

Workload Projections

	FY01	FY02	FY03	FY04	FY05	FY06
Tier 1 permits (new)	54	9	1	1	1	1
Tier 1 permit modifications	0	40	32	16	16	16
Tier 1 permit renewals	0	0	0	22	22	22
Tier 2 permits	15	0	0	0	0	0
PTCs	35	0	0	0	0	0
Compliance activities	63	64	64	65	66	67
Certification, data, & fee reviews	63	64	64	65	66	67
Monitors					20	
EI&M	63	64	64	65	66	67
Regulations and guidance	1.5	0.75	0.75	0.75	0.75	0.75
Administration and planning	3.2	2	2	2	2	2
Small business assistance	1	0.5	0.5	0.5	0.5	0.5

Unit Costs

Tier 1 permits (new)	25,000
Tier 1 permit modifications	10,000
Tier 1 permit renewals	15,000
Tier 2 permits	10,000
PTCs	5,000
Compliance activities	15,000
Certification, data, & fee reviews	1,000
Monitors	
EI&M	1,000
Regulations and guidance	82,000
Administration and planning	96,000
Small business assistance	68,000

Projected Costs

	FY01	FY02	FY03	FY04	FY05	FY06
Tier 1 permits (new)	1,350,000	225,000	25,000	25,000	25,000	25,000
Tier 1 permit modifications	0	400,000	320,000	160,000	160,000	160,000
Tier 1 permit renewals	0	0	0	330,000	330,000	330,000
Tier 2 permits	150,000	0	0	0	0	0
PTCs	175,000	0	0	0	0	0
Compliance activities	945,000	960,000	960,000	975,000	990,000	1,005,000
Certification, data, & fee reviews	63,000	64,000	64,000	65,000	66,000	67,000
Monitors	227,000	293,250	359,500	425,750	492,000	516,600
EI&M	63,000	64,000	64,000	65,000	66,000	67,000
Regulations and guidance	123,000	61,500	61,500	61,500	61,500	61,500
Administration and planning	307,200	192,000	192,000	192,000	192,000	192,000
Small business assistance	68,000	34,000	34,000	34,000	34,000	34,000
	3,471,200	2,293,750	2,080,000	2,333,250	2,416,500	2,458,100

WORKLOAD ESTIMATE FOR TITLE V FEES

new schedule

Workload Projections

	FY01	FY02	FY03	FY04	FY05	FY06
Tier 1 permits (new)	43	11	2	1	1	1
Tier 1 permit modifications	0	4	33	11	11	11
Tier 1 permit renewals	0	0	0	18	19	19
Tier 2 permits	15	2	0	0	0	0
PTCs	35	0	0	0	0	0
Compliance activities	90	56	56	57	58	59
Certification, data, & fee reviews	90	56	56	57	58	59
Monitors					20	
EI&M	56	56	56	57	58	59
Regulations and guidance	1.5	0.75	0.75	0.75	0.75	0.75
Administration and planning	3.2	2	2	2	2	2
Small business assistance	1	0.5	0.5	0.5	0.5	0.5

Unit Costs

Tier 1 permits (new)	25,000
Tier 1 permit modifications	10,000
Tier 1 permit renewals	15,000
Tier 2 permits	10,000
PTCs	5,000
Compliance activities	15,000
Certification, data, & fee reviews	1,000
Monitors	
EI&M	1,000
Regulations and guidance	82,000
Administration and planning	96,000
Small business assistance	68,000

Projected Costs

	FY01	FY02	FY03	FY04	FY05	FY06
Tier 1 permits (new)	1,075,000	275,000	50,000	25,000	25,000	25,000
Tier 1 permit modifications	0	40,000	330,000	110,000	110,000	110,000
Tier 1 permit renewals	0	0	0	270,000	285,000	285,000
Tier 2 permits	150,000	20,000	0	0	0	0
PTCs	175,000	0	0	0	0	0
Compliance activities	1,350,000	840,000	840,000	855,000	870,000	885,000
Certification, data, & fee reviews	90,000	56,000	56,000	57,000	58,000	59,000
Monitors	227,000	293,250	359,500	425,750	492,000	516,600
EI&M	56,000	56,000	56,000	57,000	58,000	59,000
Regulations and guidance	123,000	61,500	61,500	61,500	61,500	61,500
Administration and planning	307,200	192,000	192,000	192,000	192,000	192,000
Small business assistance	68,000	34,000	34,000	34,000	34,000	34,000
	3,621,200	1,867,750	1,979,000	2,087,250	2,185,500	2,227,100

Projected Costs by Part 70 Category (Average projected cost FY02 through FY06)

Regulations and guidance	61,500	
Permits	503,000	
Administration and planning	192,000	
Compliance activities	1,043,200	
Monitoring	417,420	
EI&M	65,200	
Small business assistance	34,000	
Subtotal	2,316,320	
Indirect	917,263	0.396 federally-authorized rate
Total	3,233,583	
EOMA (approximate)	420,000	
Title V fees	2,813,583	

Assumptions:

63 Title V facilities escalating to 67 Title V facilities

The costs for PTCs and Tier 2 operating permits for Title V facilities will be removed from the fee fund

Approximately 20 ambient monitors will be supported by Title V fees by FY06

Unit costs are loaded

Projected Costs by Part 70 Category (Average projected cost FY02 through FY06)

Regulations and guidance	61,500	
Permits	392,000	
Administration and planning	192,000	
Compliance activities	915,200	
Monitoring	417,420	
EI&M	57,200	
Small business assistance	34,000	
Subtotal	2,069,320	
Indirect	819,451	0.396 federally-authorized rate
Total	2,888,771	
EOMA (approximate)	550,000	
Title V fees	2,338,771	

Assumptions:

56 Title V facilities escalating to 59 Title V facilities

The costs for PTCs and Tier 2 operating permits, except for new SM, will be removed from the fee fund

Approximately 20 ambient monitors will be supported by Title V fees by FY06

Unit costs are loaded

TITLE 39
HEALTH AND SAFETY
CHAPTER 36
WATER QUALITY

39-3617. DESIGNATION OF OUTSTANDING RESOURCE WATERS. ~~(1)By July 1 any person may request, in writing to the board of environmental quality health and welfare, that a water body stream segment may be considered for designation as an outstanding resource water. The board shall prepare an initial nominating report consisting of a list of all nominations and a list of those nominated water bodies that the board recommends for further study as outstanding resource water and submit them to the Speaker of the House and the President Pro Tem of the Senate prior to the beginning of the Legislative session. ~~recommend to the legislature those stream segments the board proposes for designation as outstanding resource waters.~~ The legislature shall determine by law which such water bodies stream segments the director shall prepare a final nominating report for. ~~to designate as outstanding resource waters.~~~~

~~(2)Stream segments~~ Final nominating reports shall be prepared so designated shall by the department and the appropriate designated agencies for the next legislative session. The reports shall include a monitoring plan deemed adequate by the department to identify the existing level of water quality and the best management practices necessary to protect the existing level of water quality in accordance with section 3936-20, Idaho Code. included in a list of outstanding resource waters to be compiled and updated by the department of health and welfare in its rules governing water quality standards. The board shall review the final nominating report and make a final recommendation to the legislature regarding outstanding resource water status for the waters discussed in the report.

~~(3) Interim status or special protection shall not be provided to streams recommended by the board prior to legislative designation as outstanding resource water.~~

~~(4) No state agency shall delay actions, or deny or delay the processing or approval of any permit for a nonpoint source activity based on nomination of a segment for designation as an outstanding resource water, or while the legislature is considering such designation.~~

39-3620. APPROVAL PROVISIONS FOR BEST MANAGEMENT PRACTICES FOR NEW NONPOINT SOURCE ACTIVITIES ON OR AFFECTING OUTSTANDING RESOURCE WATERS. No person may conduct a new nonpoint source activity on or affecting an outstanding resource water, except for a short-term or temporary activity as set forth in section 39-3602, Idaho Code, prior to approval by the designated agency as provided in this section.

(1) ~~Within six (6) months of designation of~~ Concurrent with submitting the final nominating report for any outstanding resource water by to the legislature, the designated agency shall submit

~~develop~~ best management practices for existing and reasonably foreseeable new nonpoint source activities. In developing best management practices the designated agencies shall (a) Solicit technical advice from state and federal agencies, research institutions, and universities and consult with affected landowners, land managers, operators, and the public; and (b) Shall assure that all public participation processes required by law have been completed, but if no public participation process is required by law, will require public notification and the opportunity to comment; (c) Recommend proposed best management practices to the board of ~~health and welfare~~ environmental quality.

(2) The board of ~~health and welfare~~ environmental quality and designated agencies shall adopt the proposed best management practices that are in compliance with the rules and regulations governing water quality standards, and based on the recommendations of the designated agency and the comments received during the public participation process;

(3) After adoption, these best management practices will be known as the outstanding resource water best management practices and will be published by the designated agency. Outstanding resource water approved best management practices will be reviewed and revised where needed by the designated agency every four (4) years in consultation with the department, landowners, federal managers, operators and the public to determine conformance with objectives of this act;

(4) Following adoption of best management practices, the designated agency shall require implementation of applicable outstanding resource water best management practices which will assure that water quality of an outstanding resource water is not lowered;

(5) Where outstanding resource water best management practices have not been adopted as set forth in subsections (1) through (4) of this section, the designated agency shall (a) Assure that all public participation processes required by law have been completed, but if no public participation process is required by law, the designated agency shall provide for public notification of the new activity and the opportunity to comment; (b) Determine that the site-specific best management practices selected for a new nonpoint source activity are designed to ensure that water quality of the outstanding resource water is not lowered; and (c) Provide for review by the department that the activity is in compliance with rules and regulations governing water quality standards.

(6) When the applicable outstanding resource water best management practices are applied, the landowner, land manager, or operator applying those practices will be in compliance with the provisions of this act. In the event water quality is lowered, the outstanding resource water best management practices will be revised within a time frame established by the designated agency to ensure water quality is restored.



STATE OF IDAHO
DEPARTMENT OF ENVIRONMENTAL QUALITY
Board of Environmental Quality

1410 North Hilton, Boise, ID 83706-1255, (208) 373-0502

Dirk Kempthorne, Governor
C. Stephen Allred, Director

**DECLARATION OF RULEMAKING
BY THE BOARD OF ENVIRONMENTAL QUALITY
ADOPTION OF PENDING RULE
DOCKET NO. 58-0102-0002**

Pursuant to the authority granted to the Board of Environmental Quality in Title 39, Chapters 1 and 36, Idaho Code, and under the provisions for pending rule adoption contained in Section 67-5224, Idaho Code, I declare that the Idaho Department of Environmental Quality rule sections contained in IDAPA 58.01.02, Water Quality Standards and Wastewater Treatment Requirements, are hereby adopted as a pending rule as presented in the attached Final Proposal.

I hereby certify that this action has been taken in compliance with Title 67, Chapter 52, Idaho Code.

11-9-2000
Date

Donald J. Chisholm
Donald J. Chisholm, Chairman

STATE OF IDAHO)
)
County of Ada)

ss.

On this 9th of Nov., 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared Donald J. Chisholm, Chairman, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have set my hand and affixed my official seal the day and year in this certificate first above written.



Debra Cline
Notary Public for Idaho
Residing at: Caldwell, ID
Expires: 7/21/01

WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS
PENDING RULE
DOCKET NO. 58-0102-0002

FINAL PROPOSAL

The initial proposal appeared in the Idaho Administrative Bulletin, Volume 00-9, September 6, 2000, pages 212 through 251. The Department of Environmental Quality recommends that the Board of Environmental Quality take the following action.

IDAPA 58.01.02.110	ADOPT AS AMENDED
IDAPA 58.01.02.120	ADOPT AS AMENDED
IDAPA 58.01.02.130	ADOPT AS AMENDED
IDAPA 58.01.02.140	ADOPT AS AMENDED
IDAPA 58.01.02.150	ADOPT AS AMENDED
IDAPA 58.01.02.250	ADOPT AS AMENDED
IDAPA 58.01.02.252	ADOPT AS INITIALLY PROPOSED
IDAPA 58.01.02.260	ADOPT AS AMENDED
IDAPA 58.01.02.284	ADOPT AS AMENDED



STATE OF IDAHO
BOARD OF
ENVIRONMENTAL QUALITY

1410 North Hilton, Boise, ID 83706-1255, (208) 373-0502

Dirk Kempthorne, Governor
C. Stephen Allred, Director

**DECLARATION OF RULEMAKING
BY THE BOARD OF ENVIRONMENTAL QUALITY
ADOPTION OF PENDING RULE
DOCKET NO. 58-0101-9902**

Pursuant to the authority granted to the Board of Environmental Quality in Title 39, Chapter 1, Idaho Code, and under the provisions for pending rule adoption contained in Section 67-5224, Idaho Code, I declare that the Idaho Department of Environmental Quality rule sections contained in IDAPA 58.01.01, Rules for the Control of Air Pollution in Idaho, are hereby adopted as a pending rule as presented in the attached Final Proposal.

I hereby certify that this action has been taken in compliance with Title 67, Chapter 52, Idaho Code.

11-9-2000
Date

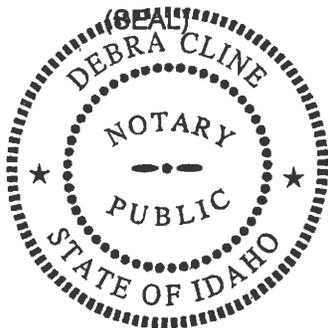
Donald J. Chisholm
Donald J. Chisholm, Chairman

STATE OF IDAHO)
)
County of Ada) ss.

On this 9th of Nov., 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared Donald J. Chisholm, Chairman, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have set my hand and affixed my official seal the day and year in this certificate first above written.

Debra Cline
Notary Public for Idaho
Residing at: Caldwell, ID
Expires: 7/21/01



RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO
PENDING RULE
DOCKET NO. 58-0101-9902

FINAL PROPOSAL

The initial proposal appeared in the Idaho Administrative Bulletin, Volume 00-7, July 5, 2000, pages 80 through 96. The Department of Environmental Quality recommends that the Board of Environmental Quality take the following action.

IDAPA 58.01.01.008	ADOPT AS INITIALLY PROPOSED
IDAPA 58.01.01.107	ADOPT AS AMENDED
IDAPA 58.01.01.563	ADOPT AS INITIALLY PROPOSED
IDAPA 58.01.01.564	ADOPT AS AMENDED
IDAPA 58.01.01.565	ADOPT AS INITIALLY PROPOSED
IDAPA 58.01.01.566	ADOPT AS AMENDED
IDAPA 58.01.01.567	ADOPT AS INITIALLY PROPOSED
IDAPA 58.01.01.568	ADOPT AS AMENDED
IDAPA 58.01.01.569	ADOPT AS INITIALLY PROPOSED
IDAPA 58.01.01.570	ADOPT AS INITIALLY PROPOSED
IDAPA 58.01.01.571	ADOPT AS INITIALLY PROPOSED
IDAPA 58.01.01.572	ADOPT AS INITIALLY PROPOSED
IDAPA 58.01.01.573	ADOPT AS INITIALLY PROPOSED
IDAPA 58.01.01.574	ADOPT AS INITIALLY PROPOSED



**DECLARATION OF RULEMAKING
BY THE BOARD OF ENVIRONMENTAL QUALITY
ADOPTION OF PENDING RULE
DOCKET NO. 58-0105-0001**

Pursuant to the authority granted to the Board of Environmental Quality in Title 39, Chapters 44 and 58, Idaho Code, and under the provisions for pending rule adoption contained in Section 67-5224, Idaho Code, I declare that the Idaho Department of Environmental Quality rule sections contained in IDAPA 58.01.05, Rules and Standards for Hazardous Waste, are hereby adopted as a pending rule as presented in the attached Final Proposal.

I hereby certify that this action has been taken in compliance with Title 67, Chapter 52, Idaho Code.

11-9-2000
Date

Donald J. Chisholm
Donald J. Chisholm, Chairman

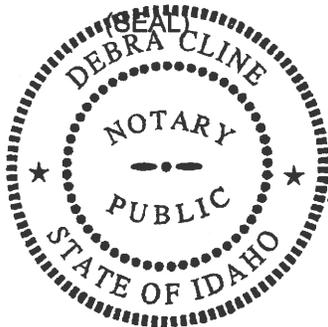
STATE OF IDAHO)
)
County of Ada)

ss.

On this 9th of Nov., 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared Donald J. Chisholm, Chairman, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have set my hand and affixed my official seal the day and year in this certificate first above written.

Debra Cline
Notary Public for Idaho
Residing at: Calderwell, ID
Expires: 7/21/01



**RULES AND STANDARDS FOR HAZARDOUS WASTE
DEPARTMENT OF ENVIRONMENTAL QUALITY
PENDING RULE
DOCKET NO. 58-0105-0001**

FINAL PROPOSAL

The Department of Environmental Quality recommends that the Board of Environmental Quality adopt the rule as initially proposed in the Idaho Administrative Bulletin, Volume 00-9, September 6, 2000, pages 252 through 257.



STATE OF IDAHO
 DEPARTMENT OF ENVIRONMENTAL QUALITY
 Board of Environmental Quality

1410 North Hilton, Boise, ID 83706-1255, (208) 373-0502

Dirk Kempthorne, Governor
 C. Stephen Allred, Director

**DECLARATION OF RULEMAKING
 BY THE BOARD OF ENVIRONMENTAL QUALITY
 ADOPTION OF PENDING RULE
 DOCKET NO. 58-0112-0001**

Pursuant to the authority granted to the Board of Environmental Quality in Title 39, Chapters 1 and 36, Idaho Code, and under the provisions for pending rule adoption contained in Section 67-5224, Idaho Code, I declare that the Idaho Department of Environmental Quality rule sections contained in IDAPA 58.01.12, Rules for Administration of Water Pollution Control Loans, are hereby adopted as a pending rule as presented in the attached Final Proposal.

I hereby certify that this action has been taken in compliance with Title 67, Chapter 52, Idaho Code.

11-9-2000
 Date

Donald J. Chisholm
 Donald J. Chisholm, Chairman

STATE OF IDAHO)
)
 County of Ada) ss.

On this 9th of Nov., 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared Donald J. Chisholm, Chairman, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have set my hand and affixed my official seal the day and year in this certificate first above written.

Debra Cline
 Notary Public for Idaho
 Residing at: Caldwell, ID
 Expires: 7/21/01



RULES FOR ADMINISTRATION OF WATER POLLUTION CONTROL LOANS
PENDING RULE
DOCKET NO. 58-0112-0001

FINAL PROPOSAL

The initial proposal appeared in the Idaho Administrative Bulletin, Volume 00-9, September 6, 2000, pages 258 through 272. The Department of Environmental Quality recommends that the Board of Environmental Quality take the following action.

IDAPA 58.01.12.000	ADOPT AS INITIALLY PROPOSED
IDAPA 58.01.12.001	ADOPT AS INITIALLY PROPOSED
IDAPA 58.01.12.002	ADOPT AS INITIALLY PROPOSED
IDAPA 58.01.12.003	ADOPT AS INITIALLY PROPOSED
IDAPA 58.01.12.004	ADOPT AS INITIALLY PROPOSED
IDAPA 58.01.12.010	ADOPT AS INITIALLY PROPOSED
IDAPA 58.01.12.020	ADOPT AS INITIALLY PROPOSED
IDAPA 58.01.12.021	ADOPT AS AMENDED
IDAPA 58.01.12.030	ADOPT AS INITIALLY PROPOSED
IDAPA 58.01.12.040	ADOPT AS INITIALLY PROPOSED
IDAPA 58.01.12.041	ADOPT AS INITIALLY PROPOSED
IDAPA 58.01.12.050	ADOPT AS INITIALLY PROPOSED
IDAPA 58.01.12.051	ADOPT AS AMENDED
IDAPA 58.01.12.060	ADOPT AS INITIALLY PROPOSED
IDAPA 58.01.12.061	ADOPT AS INITIALLY PROPOSED
IDAPA 58.01.12.999	ADOPT AS INITIALLY PROPOSED



STATE OF IDAHO
 DEPARTMENT OF ENVIRONMENTAL QUALITY
 Board of Environmental Quality

1410 North Hilton, Boise, ID 83706-1255, (208) 373-0502

Dirk Kempthorne, Governor
 C. Stephen Allred, Director

**DECLARATION OF RULEMAKING
 BY THE BOARD OF ENVIRONMENTAL QUALITY
 ADOPTION OF PENDING RULE AND
 AMENDMENTS TO TEMPORARY RULE
 DOCKET NO. 58-0122-0001**

Pursuant to the authority granted to the Board of Environmental Quality in Title 39, Chapters 1 and 36, Idaho Code, and under the provisions for pending and temporary rule adoption contained in Sections 67-5224 and 67-5226, Idaho Code, I declare that the Idaho Department of Environmental Quality rule sections contained in IDAPA 58.01.22, Rules for Administration of Planning Grants for Public Drinking Water Facilities, are hereby adopted as a pending rule and amendments to temporary rule as presented in the attached Final Proposal.

I hereby certify that this action has been taken in compliance with Title 67, Chapter 52, Idaho Code.

9-11-2000
 Date

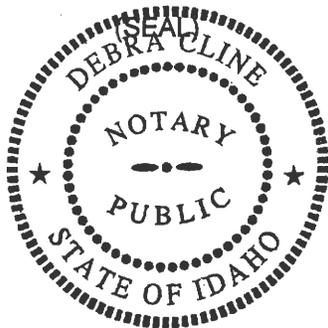
Donald J. Chisholm
 Donald J. Chisholm, Chairman

STATE OF IDAHO)
) ss.
 County of Ada)

On this 9th of NOV., 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared Donald J. Chisholm, Chairman, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have set my hand and affixed my official seal the day and year in this certificate first above written.

Debra Cline
 Notary Public for Idaho
 Residing at: Caldwell, ID
 Expires: 7/21/01



RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO DRINKING WATER FACILITIES
PENDING RULE
DOCKET NO. 58-0122-0001

FINAL PROPOSAL

The initial proposal appeared in the Idaho Administrative Bulletin, Volume 00-9, September 6, 2000, pages 273 through 283. The Department of Environmental Quality recommends that the Board of Environmental Quality take the following action.

IDAPA 58.01.22.000	ADOPT AS INITIALLY PROPOSED
IDAPA 58.01.22.001	ADOPT AS INITIALLY PROPOSED
IDAPA 58.01.22.002	ADOPT AS INITIALLY PROPOSED
IDAPA 58.01.22.003	ADOPT AS AMENDED
IDAPA 58.01.22.004	ADOPT AS INITIALLY PROPOSED
IDAPA 58.01.22.005	ADOPT AS INITIALLY PROPOSED
IDAPA 58.01.22.006	ADOPT AS AMENDED
IDAPA 58.01.22.007	ADOPT AS AMENDED
IDAPA 58.01.22.010	ADOPT AS AMENDED
IDAPA 58.01.22.020	ADOPT AS AMENDED
IDAPA 58.01.22.030	ADOPT AS AMENDED
IDAPA 58.01.22.031	ADOPT AS AMENDED
IDAPA 58.01.22.040	ADOPT AS AMENDED
IDAPA 58.01.22.050	ADOPT AS AMENDED
IDAPA 58.01.22.060	ADOPT AS AMENDED
IDAPA 58.01.22.070	ADOPT AS AMENDED
IDAPA 58.01.22.080	ADOPT AS INITIALLY PROPOSED



STATE OF IDAHO
 BOARD OF
 ENVIRONMENTAL QUALITY

1410 North Hilton, Boise, ID 83706-1255, (208) 373-0502

Dirk Kempthorne, Governor
 C. Stephen Allred, Director

**DECLARATION OF RULEMAKING
 BY THE BOARD OF ENVIRONMENTAL QUALITY
 ADOPTION OF TEMPORARY RULE
 DOCKET NO. 58-0101-0004**

Pursuant to the authority granted to the Board of Environmental Quality in Title 39, Chapter 1, Idaho Code, and under the provisions for temporary rule adoption contained in Section 67-5226, Idaho Code, I declare that the Idaho Department of Environmental Quality rule sections contained in IDAPA 58.01.01, Rules for the Control of Air Pollution in Idaho, are hereby adopted temporary rules.

SECTION AFFECTED

IDAPA 58.01.01.210
 IDAPA 58.01.01.552
 IDAPA 58.01.01.553
 IDAPA 58.01.01.556
 IDAPA 58.01.01.558
 IDAPA 58.01.01.561

ACTION TAKEN

ADOPTED AS PRESENTED
 ADOPTED AS PRESENTED

I hereby certify that this action has been taken in compliance with Title 67, Chapter 52, Idaho Code.

11-9-2000
 Date

Donald J. Chisholm
 Donald J. Chisholm, Chairman

STATE OF IDAHO)
)
 County of Ada) ss.

On this 9th of NOV., 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared Donald J. Chisholm, Chairman, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have set my hand and affixed my official seal the day and year in this certificate first above written.



Debra Cline
 Notary Public for Idaho
 Residing at: Caldwell, ID
 Expires: 7/21/01