



State of Idaho  
Department of Environmental Quality  
Board of Environmental Quality

Meeting Minutes  
February 13, 2020

1410 North Hilton • Boise, ID 83706 • (208) 373-0502  
www.deq.idaho.gov

Brad Little, Governor  
John H. Tippetts, Director

**MEMBERS OF THE BOARD**

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Boise, ID 83707

Kermit V. Kiebert, Vice-Chairman  
P.O. Box 970  
Ponderay, ID 83852

Mark Bowen, Secretary  
999 W. Main St.  
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Boise, ID 83702

L. Nicholas "Nick" Purdy  
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Dr. John R. MacMillan  
1172 Hankins Rd. N  
Twin Falls, ID 83301

Carol Mascareñas  
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Idaho Falls, ID 83401

Kevin C. Boling  
5881 N. Ferdinand Court  
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**LEGAL COUNSEL**

Lisa J. Carlson  
(208) 373-0455

**BOARD ASSISTANT**

Darika Barnes  
(208) 373-0240

**Meeting Minutes (DRAFT)**

**Idaho Board of Environmental Quality**

**February 13, 2:00 PM**

**DEQ State Office – Conference Room A/B  
1410 N Hilton Street  
Boise, Idaho**

**Via Conference Phone: (208) 373-0101, opt. 1**

*Minutes are not final until approved by the board.*

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Beth Elroy, Chairman

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Mark Bowen, Secretary

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Darika Barnes, Assistant to the Board

## **Board Members Participating**

Beth Elroy, Chairman

Mark Bowen, Secretary

Kermit Kiebert, Vice Chairman (via conference phone)

Kevin Boling, Member (via conference phone)

Dr. John R. "Randy" MacMillan, Member (via conference phone)

Carol Mascareñas, Member (via conference phone)

Nick Purdy, Member (via conference phone)

## **Department of Environmental Quality Staff Present**

John Tippetts, Director

Jess Byrne, Deputy Director

Darika Barnes, Executive Assistant to the Director and Board

Lisa Carlson, Senior Deputy Attorney General-DEQ, Legal Counsel to the Board

Paula Wilson, Administrative Rules Coordinator

Michael McCurdy, Waste Management and Remediation Division Administrator

Tiffany Floyd, Air Quality Division Administrator

Dr. Mary Anne Nelson, Surface and Waste Water Division Administrator

Jerri Henry, Drinking Water Protection and Finance Division Administrator

Anna McGeehan, Communications & Outreach Manager

Lisa O'Hara, Deputy Attorney General

Mark Cecchini-Beaver, Deputy Attorney General

Rick Grisel, Deputy Attorney General

Susan Hamlin, Deputy Attorney General

Hannah Young, Deputy Attorney General

## **Via Conference Phone**

No members of the public were present on the phone.

## **Others Present**

No members of the public were present in the conference room.

Note: Any attachments referenced in these minutes are permanent attachments to the minutes on file at the Idaho Department of Environmental Quality (DEQ).

### **Call to Order, Roll Call, and Public Comment**

Chairman Beth Elroy called to order at 2:00 p.m. the meeting of the Idaho Board of Environmental Quality (board). Roll call was taken with a quorum of two members present and five members participating via conference phone.

Chairman Beth Elroy opened the floor for the public to address the board on topics not specifically on the agenda. There were no members of the public present at the meeting or on the phone to provide commentary.

Director John Tippetts provided a brief overview of why this extra meeting was called. All existing administrative rules expire July 1 of every year unless they are reauthorized for the next year by the Idaho Legislature. In 2019, the Idaho Legislature chose not to reapprove agency rules for the following year; therefore all rules were set to expire on July 1, 2019. However, all agencies were able to continue operations through the use of temporary rules. This year, all of DEQ's rules have been reviewed by the proper legislative committees, but the Legislature still needs to take certain actions before the end of session to ensure that DEQ will have rules in place for next year. However, there is a possibility this might not happen again this year, meaning DEQ's rules could expire at sine die.

The purpose of this board meeting is to ensure DEQ's rules will be enacted as temporary rules for the coming year in the event they are allowed by the Legislature to expire again this year. DEQ's request is that the board approves the rules, allowing DEQ to continue its work.

Mark Bowen asked for a clearer explanation of the intent of the rules not being approved. Director Tippetts said it was an intentional act. He explained that the current statute outlining the process for approving rules only requires that one legislative body does not reject the rule. The House of Representatives wants to change it so that both legislative bodies must approve the rule. The Governor's office has asked us to be prepared in the event that all administrative rules are not approved.

Chairman Beth Elroy asked what rules will be in effect if the board approves these two motions. Deputy Attorney General Lisa Carlson replied that these motions provide conditional approval for DEQ's rules to go into effect only if the legislature does not approve them before sine die 2020. The temporary rules would then be in effect until sine die 2021, and the pending rules would be heard during the next Legislative Session.

### **Agenda Item No. 1: Omnibus Rulemaking - Fee Rules (Action item) Docket No. 58-0000-2000F**

Director John Tippetts introduced the agenda item, recommending the board adopt as temporary fee rules the previously approved and codified fee rule chapters under docket number 58-000-2000F. There were no comments from the board or from members of the public.

- Motion: Mark Bowen moved that the Idaho Board of Environmental Quality adopt as temporary fee rules the rules presented under Docket No. 58-0000-2000F. This action is for the temporary adoption of IDAPA 58 rule chapters as they were

presented in the pending rule dockets adopted by this board in 2019 and submitted to the Second Regular Session of the 65th Idaho Legislature for review (2019 pending rule dockets).

IDAPA 58 Rule Chapters:

- IDAPA 58.01.01
- IDAPA 58.01.05
- IDAPA 58.01.06
- IDAPA 58.01.07
- IDAPA 58.01.08
- IDAPA 58.01.09
- IDAPA 58.01.11
- IDAPA 58.01.12
- IDAPA 58.01.13
- IDAPA 58.01.14
- IDAPA 58.01.18
- IDAPA 58.01.20
- IDAPA 58.01.25

2019 Pending Rule Dockets:

- Docket No. 58-0000-1900F
- Docket No. 58-0101-1903
- Docket No. 58-0101-1904
- Docket No. 58-0101-1905
- Docket No. 58-0105-1901
- Docket No. 58-0109-1901
- Docket No. 58-0111-1901

Pursuant to Section 67-5226, Idaho Code, the Governor has found that temporary adoption of these rules is appropriate to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety, and welfare of the citizens of Idaho, and deprive them of the benefit intended by these rules.

The Governor has also found that the fees or charges being imposed are justified and necessary to avoid immediate danger to the agency's budget, to the state's budget, to necessary state functions and services, and to avoid immediate danger of a potential violation of Idaho's constitutional requirement that it balance its budget.

Therefore, we are adopting these temporary fee rules to be effective upon the adjournment sine die of the Second Regular Session of the Sixty-fifth Idaho Legislature. This adoption is conditional and will only become effective if the rule dockets are not otherwise approved or rejected by the Idaho Legislature and/or not extended pursuant to the Idaho Administrative Procedure Act, including Sections 67-5291 and 67-5292, Idaho Code, as amended.

- Second: The motion was seconded by Randy MacMillan.
- Vote: The motion carried unanimously.

**Agenda Item No. 2: Omnibus Rulemaking – Non-Fee Rules**  
 (Action item) **Docket No. 58-0000-2000**

Director John Tippetts introduced the agenda item, recommending the board adopt as temporary rules the previously approved and codified non-fee rule chapters under docket number 58-0000-2000. There were no comments from the board or from members of the public.

- Motion: Mark Bowen moved that the Idaho Board of Environmental Quality adopt as temporary rules the rules presented under Docket No. 58-0000-2000. This action is for the temporary adoption of IDAPA 58 rule chapters as they were presented in the pending rule dockets adopted by this board in 2019 and submitted to the Second Regular Session of the 65th Idaho Legislature for review (2019 pending rule dockets).

IDAPA 58 Rule Chapters:

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|------------------|------------------|
| - IDAPA 58.01.02 | - IDAPA 58.01.17 |
| - IDAPA 58.01.03 | - IDAPA 58.01.21 |
| - IDAPA 58.01.04 | - IDAPA 58.01.22 |
| - IDAPA 58.01.10 | - IDAPA 58.01.23 |
| - IDAPA 58.01.16 | - IDAPA 58.01.24 |

2019 Pending Rule Dockets:

- Docket No. 58-0000-1900
- Docket No. 58-0102-1901
- Docket No. 58-0103-1902
- Docket No. 58-0117-1901

Pursuant to Section 67-5226, Idaho Code, the Governor has found that temporary adoption of these rules is appropriate to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules.

Therefore, we are adopting these temporary fee rules to be effective upon the adjournment sine die of the Second Regular Session of the Sixty-fifth Idaho Legislature. This adoption is conditional and will only become effective if the rule dockets are not otherwise approved or rejected by the Idaho Legislature and/or not

extended pursuant to the Idaho Administrative Procedure Act, including Sections 67-5291 and 67-5292, Idaho Code.

- Second: Kevin Boling seconded the motion.
- Vote: The motion carried unanimously.

### **Other Business**

There was no other business to conduct.

### **Adjournment**

Chairman Beth Elroy declared the meeting adjourned at 2:24 P.M.