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DEQ Hearings Coordinator
DOCKET NO. 0101-12-05

W. ALLEN FREEMAN
1127 W EDWARDS AVE
NAMPA, ID 83686
208 284 3014
(petitioner's name, mailing address, and phone number)

BEFORE THE BOARD OF ENVIRONMENTAL QUALITY
STATE OF IDAHO

W. ALLEN FREEMAN,)
Petitioner,)
)
v.) Docket No. _____)
)
IDAHO DEPARTMENT OF ENVIRONMENTAL)
QUALITY,) PETITION INITIATING A
Respondent.) CONTESTED CASE
)
)
)

W. ALLEN FREEMAN petitions the Idaho Board of Environmental Quality (Board)
(name of petitioner)

for a contested case proceeding pursuant to Idaho Code § 39-107(5) and IDAPA 58.01.23, Rules of Administrative Procedure Before the Board of Environmental Quality. Petitioner seeks review of the Department of Environmental Quality's decision that petitioner's motor vehicle registration may be revoked by the Idaho Transportation Department pursuant to Idaho Code § 39-116B.

In a notice dated _____, the Department of Environmental Quality notified petitioner that registration for the vehicle (described below) will be revoked by the Idaho Transportation Department without further notice unless petitioner complies with the emission testing requirements or files a petition for contested case within 35 days of the date of the notice.

The vehicle is description is as follows:
Year/Make 2006 MAZDA MPV
License 2C E-J983
Vehicle ID JM3LW28A660539914

IDAPA 58.01.01, Rules for the Control of Air Pollution in Idaho, Subsection 517.05, lists the types of vehicles exempt from the emission testing requirements. Petitioner requests that the Board enter an order exempting petitioner from emission testing requirements on the grounds that the vehicle is (choose one):

- Electric or hybrid motor vehicle (IDAPA 58.01.01.517.05.a).
- Motor vehicle with a model year less than five (5) years old (IDAPA 58.01.01.517.05.b).
- Motor vehicle with a model year older than 1981 (IDAPA 58.01.01.517.05.c).
- Classic automobile as defined by Idaho Code § 49-406A (IDAPA 58.01.01.517.05.d).
- Motor vehicle with a maximum vehicle gross weight of less than fifteen hundred (1500) pounds (IDAPA 58.01.01.517.05.e).
- Motor vehicle registered as motor home as defined by Idaho Code § 49-114 (IDAPA 58.01.01.517.05.f).
- Motorized farm equipment (IDAPA 58.01.01.517.05.g).
- Registered motor vehicle engaged solely in the business of agriculture (IDAPA 58.01.01.517.05.h).
- Other (describe) SEE ATTACHED SHEET

Petitioner has legal standing to initiate this contested case because he/she is the owner of the motor vehicle that is the subject of the contested case.

Dated this 19th day of NOVEMBER, 2012.

W. Allen Freeman
Petitioner

November 19, 2012

Board of Environmental Quality
State of Idaho

Re: Petition initiating a Contested Case
W. Allen Freeman, Petitioner

A Brief on the Legal History of VET in Idaho in support of my Contested Case

Petitioner requests that the Board enter an order exempting petitioner from emission testing requirements on the grounds that the vehicle is not subject to DEQ's vehicle emissions testing program caused by the Board's approval of the Administrative Rule (Docket Number 58-0101-0901) on October 7, 2009 in direct violation of the provisions required by Idaho Code 39-107D (2) (a) (b), (3) (e) and 39-102A (6) which makes the Administrative Rule null and void which makes the vehicle emissions program illegal.

This contested case is not a legal challenge to the written statute or rule and is properly before this Board.

The complete 2003 legislative committee minutes file on HB 150 unmistakably shows the legislative intent behind HB 150 as to how DEQ was to justify implementation of rules for programs not required by EPA:

DEQ is to base rules and standards on sound data and disclose that data.

DEQ shall utilize best available peer reviewed science and apply well established risk assessment methods.

DEQ is required to use the same scientific methods as EPA.

The DEQ and Board know ALL of these laws apply to DEQ's Administrative Rule that allowed DEQ to implement Ozone VET in the Ada and Canyon counties.

39-107D (1): "The legislature directs **that any rule formulated and recommended by the department (DEQ) to the board** which is broader in scope or more stringent than federal law or regulations, or proposes to regulate an activity not regulated by the federal government..."

*The EPA requires VET **only in areas in NONATTAINMENT.** The Treasure Valley has **always been in ATTAINMENT** for PM2.5 and OZONE. Based on DEQ's 2002 submissions to the EPA, the EPA designated the Treasure Valley in **ATTAINMENT** for PM10 and CO. **EPA does not require Ozone VET in the Treasure Valley** and DEQ could make CO VET a contingency program in event of CO exceedence 2012-2022.*

39-102A (6): "The legislature further intends that environmental quality programs be promulgated and managed such that the **benefits** of pollution control measures have a **reasonable relationship to the public health costs, private property rights, environmental, economic and energy impacts** of such measures..."

*DEQ did not provide the Board any information as to VET economic impact or as having a reasonable relationship to VET benefits **NOR DID THE BOARD REQUIRE DEQ TO PROVIDE THIS INFORMATION FOR THE BOARD'S RULE APPROVAL HEARING.***

39-107D (2): "...(DEQ) shall utilize: (a) The best available peer reviewed science and supporting studies..."

DEQ utilized and affirmed 1999 emissions inventory data as the basis to get 39-116B passed in 2008, but DEQ did not disclose data known in 2002, 2003, 2008, and 2010 projected emissions reductions NOR DID THE BOARD REQUIRE DEQ TO PROVIDE THIS INFORMATION FOR THE BOARD'S RULE APPROVAL HEARING.

39-107D (3): requires DEQ to identify "studies that fail to support any estimate of...environmental effects and the methodology to reconcile inconsistencies in the data."

DEQ did not identify to the board 2002, 2003 or 2008 studies or other existing studies or data that failed to support DEQ's estimate of environmental effects NOR DID THE BOARD REQUIRE DEQ TO PROVIDE THIS INFORMATION FOR THE BOARD'S RULE APPROVAL HEARING.

To meet EPA rules for Ada County's PM10 SIP, DEQ was required to submit a 2005 and 2008 Emissions Inventory (EI). EPA's current MOBILE6.2 computer program was effective May 19, 2004 for PM10 transportation conformity analyses, but DEQ used the old MOBILE6 program for both the 2005 and 2008 EIs, contrary to the EPA directive, made the basis of DEQ's 2008 legislative testimony incomplete and misleading. DEQ used this same data in the subsequent February 16, 2012, defense of the rule and implementation of Ozone VET and accepted by the Board as credible. COMPASS correctly used MOBILE 6.2 and proved 2003 EPA required vehicle NOx (48%) and VOC (40%) reductions were **exceeded** contrary to DEQ EI testimony. *DEQ did not disclose the projected 2010 emissions reductions required by EPA in 2003 were proven to have been exceeded November 16, 2009 to the Legislative Review Committee nor at the legislative hearings to approve the rule in 2010.*

THESE LAWS SPECIFICALLY REQUIRE DEQ TO PROVIDE THIS INFORMATION TO THE BOARD ONLY; DEQ IS NOT LEGALLY REQUIRED TO PROVIDE SUCH INFORMATION TO THE LEGISLATURE AT HEARINGS BEFORE OR AFTER A LAW IS PASSED NOR AT THE LEGISLATIVE RULE APPROVAL HEARINGS.

DEQ had knowledge of these laws and did not comply with the provisions in these laws. The Board had knowledge of these laws and did not require DEQ's compliance with the laws. Both DEQ and the Board did not meet the requirements of these laws. Therefore, the rule is illegal, invalid, and null and void. The Board, as per 39-107 (6), must repeal the rule and DEQ must stop the illegal VET program immediately.

W. Allen Freeman
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