



State of Idaho
DEPARTMENT OF ENVIRONMENTAL QUALITY
BOARD OF ENVIRONMENTAL QUALITY

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Curt Fransen, Director

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IDAHO BOARD OF ENVIRONMENTAL QUALITY

MINUTES

October 17, 2013

The Board of Environmental Quality convened on October 17, 2013, at 9:00 a.m.
at:

**Department of Environmental Quality
Conference Center
1410 N. Hilton
Boise, Idaho**

BOARD MEMBERS PRESENT

Carol Mascareñas, Chair (*via video conference in Idaho Falls*)
John McCreedy, Vice-Chair
Kevin Boling, Secretary (*via video conference in Coeur d'Alene*)
Nick Purdy, Member (*via video conference in Twin Falls*)
Dr. John R. "Randy" MacMillan, Member
Beth Elroy, Member

BOARD MEMBERS ABSENT

Kermit Kiebert, Member

DEPARTMENT OF ENVIRONMENTAL QUALITY STAFF PRESENT

Curt Fransen, Director
Lisa Carlson, Deputy Attorney General, DEQ
Paula Wilson, Rules Coordinator
Rosie Alonzo, Management Assistant, Assistant to the Board
Jess Byrne, Deputy Director
Tiffany Floyd, Administrator, Air Quality Division
Barry Burnell, Administrator, Water Quality Division
Orville Green, Administrator, Waste Management & Remediation Division
Kari Kostka, Policy Analyst
Carl Brown, Air Quality Analyst – Toxics
Erick Neher, Idaho Falls Regional Administrator (*via video conference in Idaho Falls*)
Dan Redline, Coeur d'Alene Regional Administrator (*via video conference in Coeur d'Alene*)
Bill Allred, Twin Falls Regional Administrator (*via video conference in Twin Falls*)

OTHERS PRESENT:

Shannon Campbell, Small Business Development Center

Brenda Tominaga, Idaho Rural Water Association

Damian Secol, BYU-Idaho student (*via video conference in Idaho Falls*)

Patrick Thomas, BYU-Idaho student (*via video conference in Idaho Falls*)

Jordon Detlor, BYU-Idaho student (*via video conference in Idaho Falls*)

Shelley Thomas, BYU-Idaho student (*via video conference in Idaho Falls*)

Courtney Brunson, BYU-Idaho student (*via video conference in Idaho Falls*)

Janette Melgaard, BYU-Idaho student (*via video conference in Idaho Falls*)

Andrew Bigler, BYU-Idaho student (*via video conference in Idaho Falls*)

- ❖ All attachments referenced in these minutes are permanent attachments to the minutes on file at the Idaho Department of Environmental Quality.

CALL TO ORDER AND ROLL CALL

Chairman Carol Mascareñas called the meeting of the Idaho Board of Environmental Quality (Board) to order at 9:00 a.m. She thanked everyone for accommodating the Board's use of video conferencing after explaining that the meeting was originally to be held at the US Department of Energy's Idaho National Lab facility near Idaho Falls, but changed due to the impending federal government shutdown affecting the facility. Roll call was taken. All Board members were present with the exception of Mr. Kermit Kiebert.

Chairman Mascareñas opened the floor to the public to address the Board on topics not specifically on the agenda. Director Curt Fransen pointed out that Ms. Lisa Carlson was present in place of Mr. Doug Conde. He also mentioned that Mr. Clayton Steele, former DEQ Lewiston Regional Administrator, moved on to a job with Clearwater Paper and that Mr. John Cardwell has been named his replacement.

Chairman Mascareñas asked for further comments. There were none.

AGENDA ITEM NO. 1: DIRECTOR'S REPORT

Director Fransen provided brief updates on the following:

FY2015 Budget Proposal – DEQ's 2015 budget proposal has been sent to the Division of Financial Management for the Governor's consideration. It includes requests to cover items such as an increase in state benefit costs, several replacement capital items, and additional funding for 2 new positions; one for Water Quality Standards development and one for National Pollutant Discharge Elimination System (NPDES) work.

FY2015 Legislative Proposals – DEQ has three legislative proposals this year:

1) Antidegradation – The Environmental Protection Agency (EPA) disapproved DEQ's de minimus exemption as inconsistent with the Clean Water Act. DEQ undertook negotiated rulemaking to develop a new de minimus provision in order to retain discretion with regard to insignificant degradations of water quality that are exempt from Tier II antidegradation review. The current proposal requires a legislative change and if approved, will be before the Board in May 2014 in the form of a temporary and a pending rule.

2) Wastewater and Drinking Water Loans – This proposed legislation would authorize the Board to transfer funds between the wastewater and drinking water State Revolving Loan Fund (SRF) accounts. The intent is to better allow the state to align available funding with demand on an annual basis. Transferring between the two accounts is a federally approved practice that several other states have already begun utilizing.

3) Definition of Sanitary Restriction – Plan and specifications reviews for public water and sewage facilities are performed by DEQ, however, the definition of sanitary restriction in Idaho Code 50-1301(15) references the Board of Health and Welfare. This proposed legislation replaces "the Board of Health and Welfare by its administrator" with "the director of the Department of Environmental Quality." It is a technical correction or "housekeeping" item which fixes an oversight from 2000 when DEQ became a department.

Potential NPDES Legislation – The Idaho Association of Commerce & Industry (IACI) has expressed interest in Idaho seeking primacy for the National Pollutant Discharge Elimination System (NPDES) program. This process would take approximately seven (7) years to fully implement. It would entail extensive rulemaking, staff hiring and development, preparation of an application and an MOA for EPA review and approval, and development of guidance and procedures. IACI has consulted DEQ during the drafting of their proposed legislation and intends to try to get it introduced and passed this coming legislative session.

Federal Shutdown – The impacts of the federal government shutdown are minimal but increasing. EPA and other federal agency sponsored meetings, conference calls, and activities have been cancelled or put on hold. The inability to obtain EPA participation or approvals has delayed progress on some issues and activities in Idaho. DEQ staff has adequate alternative work to focus on while EPA-impacted projects are on hold.

INL cleanup contractors are reporting that shutdown of their work will be required around October 18. Any prolonged shutdown could impact cleanups important to Idaho which have schedules and deadlines set out under Idaho settlement agreement and consent orders.

To date we have been able to access federal grant funds. Whether that remains the case, if the federal deficit limit is exceeded, is unknown.

Water Quality Toxics Criteria Rulemaking (Fish Consumption Survey) – Since the May Board meeting, four rulemaking sessions have been conducted focusing on the development of a fish consumption survey. Boise State University was contracted to assist in the development of the survey which was recently completed. The next steps will include contracting for services to collect fish consumption rate (FCR) information using the survey. There will also be a continuation of various important policy discussion public meetings that will run concurrent with the survey.

Miscellaneous Items – The November DEQ Board meeting has been cancelled. There is also no need for a winter 2014 Board meeting since no Board member appointments require Senate confirmation this session.

Antidegradation rules and wastewater and drinking water facility grants and loan prioritization are topics planned for the May Board meeting. This will most likely be in the form of a work session.

The Board minutes were drafted this time using a more condensed format than previous minutes. Looking at other state agencies' minutes, this seemed a reasonable approach. If the Board is agreeable, DEQ will continue to format the minutes in a similar manner unless a Board member specifically asks for something to be in the record.

Director Fransen stood for and responded to questions and comments from Board members.

Chairman Mascareñas addressed the proposal from Director Fransen regarding the brevity of the Board minutes. Board members that commented supported the abridged format and Chairman Mascareñas indicated that the Board accepts Director Fransen's approach for simplified minutes.

AGENDA ITEM NO. 2: ADOPTION OF MEETING MINUTES

Minutes of May 9, 2013.

- **MOTION:** Mr. John McCreedy moved that the Board adopt the May 9, 2013 minutes as prepared.
- **SECOND:** Mr. Kevin Boling.
- VOICE VOTE:** Motion carried unanimously.

AGENDA ITEM NO. 3: RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO, DOCKET NO. 58-0101-1301 (PENDING RULE)

(UPDATE OF FEDERAL REGULATIONS INCORPORATED BY REFERENCE)

Ms. Tiffany Floyd, Air Quality Division Administrator, introduced herself. Ms. Floyd presented the Rules for the Control of Air Pollution in Idaho, Docket No. 58-0101-1301, which updates citations to federal regulations incorporated by reference in Section 107 of the Rules for the Control of Air Pollution in Idaho. This rulemaking was necessary to ensure that Idaho's rules are consistent with federal regulations.

For example, Ms. Floyd pointed out a change in Section 107.03.h involving the federal plan requirements for hospital/medical/infectious waste incinerations for existing facilities. She indicated that there are two such facilities in Idaho: 1) University of Idaho and 2) Larson-Miller Medical Waste Disposal Company, however, that their current operations and burn quantities fall below the thresholds listed in the federal plan requirement. These two entities will be required to provide additional recordkeeping documentation and notifications to the state but are otherwise exempt from the federal plan requirements.

She said that to ensure statutory compliance, a provision has been added addressing medical waste combustors in Section 39-128 and explained that Sections 861 and 862 regarding medical waste incinerators were removed to cleanup sections that no longer apply.

Ms. Floyd continued, stating that subsection 107.3.c was revised to address the implementation plan specific to Idaho and not the rules and plans developed for other states' implementation plans.

Ms. Floyd concluded that due to the nature of this incorporation by reference rulemaking, DEQ did not hold a negotiated rulemaking with respect to adopting the federal regulations necessary for EPA's approval of Idaho's Title V Operating Permit Program. She said DEQ did hold both a public

comment period and a public hearing but did not receive any comments. She also mentioned that the two medical waste incinerator facilities impacted were contacted about the changes and how they will be affected. DEQ does not foresee any controversial or stringency issues with this rulemaking.

Ms. Floyd stood for and answered questions from the Board.

Chairman Mascareñas asked if there were further comments from the public on this temporary rule. There were none. She then asked for a motion from the Board.

- **MOTION:** Dr. Randy MacMillan moved the Idaho Board of Environmental Quality adopt as pending rules the Rules for Air Pollution in Idaho as presented in the final proposal under Docket No. 58-0101-1301 with the pending rules becoming final and effective upon the adjournment sine die of the second regular session of the sixty-second Idaho Legislature if approved by the Legislature.
- **SECOND:** Ms. Beth Elroy.
ROLL CALL VOTE: There were six (6) ayes, zero (0) nays, and one (1) absent.

AGENDA ITEM NO. 4: CONTESTED CASE AND RULE DOCKET STATUS REPORT

Ms. Paula Wilson, Rules Coordinator, reviewed the current contested case and rule docket status report. (A reference copy of the promulgation status report is attached to the minutes on file.)

AGENDA ITEM NO. 5: SET 2014 BOARD MEETING SCHEDULE

The Board scheduled meetings for 2014 on the following dates: May 3, October 10 and 11, and November 14 and 15.

AGENDA ITEM NO. 6: IDAHO FALLS REGIONAL OFFICE OVERVIEW

Mr. Erick Neher, Idaho Falls Regional Office Administrator, gave a presentation on his region which is comprised of nine counties; Lemhi, Custer, Clark, Fremont, Butte, Jefferson, Madison, Teton, and Bonneville. He touched on the various services the region provides and their core programs. One of the programs he highlighted as being unique to the Idaho Falls Regional Office was the Idaho National Laboratory (INL) Oversight Program where DEQ assesses the actual or potential environmental and public health impacts of the U.S. Department of Energy's INL nuclear and energy research facility.

After concluding his presentation, Mr. Neher stood for questions from the Board but there were none. Chairman Mascareñas asked if there were questions from the public. There was one question.

Ms. Janette Melgaard, BYU-Idaho student, asked for clarification regarding the sodium bearing waste (SBW) treatment and if it was delayed by the impending federal shutdown and furloughs at the INL. Mr. Neher clarified that the SBW is the residual liquid waste generated during the reprocessing of spent fuel at the INTEC facility and that with the resolution of budget issues this week in Congress, the work should continue without delay.

There were no further questions. Chairman Mascareñas thanked Mr. Neher for his presentation.

THE MEETING ADJOURNED AT 10:38 A.M.

Carol Mascareñas

Carol Mascareñas, Chairman

Kevin Boling

Kevin Boling, Secretary

Rosie Alonzo

Rosie Alonzo, Assistant to the Board and Recorder