



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

IDAHO BOARD OF ENVIRONMENTAL QUALITY

MINUTES

October 17 & 18, 2001

The Board of Environmental Quality convened on October 17, 2001 at 8:30 a.m. at:

Shilo Inn Convention Center
780 Lindsay Boulevard
Idaho Falls, 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
Nick Purdy, Member

BOARD MEMBERS ABSENT:

Marguerite McLaughlin, 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
Keith Donahue, DAG, DEQ
Dean Ehlert, State Waste and Remediation Program
Paula Gradwohl, Paralegal, Administrative Rules Coordinator
Orville Green, Administrator, State Waste Management & Remediation Program
Bill Jerrel, Loan Programs
Jim Johnston, Idaho Falls Regional Administrator
Kate Kelly, Administrator, Air Quality Program
Kathleen Trever, INEEL Oversight Program

OTHERS PRESENT:

David Atkinson, Ph.D, Idaho National Engineering and Environmental Laboratory (INEEL)
Jack Barraclough, Idaho State Representative
Bill Becker, INEEL
Robert Breckenridge, INEEL
Jay Calderwood, Teton County Commissioner
Jane Gorsuch, Intermountain Forest Association
Lisa Green, Department of Energy (DOE)
Dennis Green, DOE
Melinda Hamilton, INEEL
Peggy Hinman
Alan Jines, DOE Public Affairs
Jack Lyman, Idaho Mining Assoc.
Clay Nichols, DOE
Donald Rasch, DOE
Dick Rush, Idaho Assoc. of Commerce & Industry
Ralph J. Steele, Bonneville County Commissioner

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

Work Session

Kathleen Trever, State Coordinator of INEEL issues and head of the INEEL Oversight Program, presented a brief overview of the program and introduced staff from the Department of Energy and INEEL. Lisa A. Green, DOE, presented a slide presentation (Attachment 1) and discussed the history of INEEL, its missions, current focus, and infrastructure. Bob Breckenridge, Manager of INEEL Ecological and Cultural Resources Department, presented a slide presentation (Attachment 2) on advances in ecological and cultural sciences. David A. Atkinson, Ph.D, INEEL, discussed the new technology used for odor detection, Ion Mobility Spectrometry (Attachment 3). Melinda Hamilton, INEEL, gave a slide presentation (Attachment 4) and discussed how biotechnology is developing biological solutions to the challenges of the DOE's environmental, energy, and national security missions. Russ Hertzog, Ph.D, gave a presentation on advances in sensor technologies related to subsurface science and how they are utilized at INEEL (Attachment 5).

The Board adjourned at 12:00 p.m. for a working luncheon where it heard a presentation (Attachment 6) by Larry Koenig, Administrator, DEQ State Planning and Special Projects. Mr. Koenig discussed the draft goals and issues for the department.

Board members and staff attended a brief tour of the INEEL Oversight Program monitoring station, then returned to the Shilo Inn Convention Center and reconvened its work session at 2:00 p.m. DEQ staff briefed the Board on the rule dockets to be presented at the Board meeting on October 18, 2001. No motions were made or passed and no votes were taken during the work session.

The meeting adjourned at 4:30 p.m.

October 18, 2001

Joint Work Session with the Idaho Water Resource Board

The Board of Environmental Quality members and staff joined the Idaho Water Resource Board (IWRB) for a joint work session at 9:30 a.m. on October 18, 2001 at the Shilo Inn Convention Center. All Board members were present with the exception of Marguerite McLaughlin, who was absent and excused.

Bill Graham, Water Planning Bureau Chief, Idaho Department of Water Resources and Hal Anderson, Administrator of the Planning and Technical Services Division for IDWR, gave slide presentations on the IWRB's financial programs (Attachment 7). Dave Mabe, Administrator of the DEQ State Water Quality Program and Bill Jerrel, DEQ Loan Program Manager, provided an overview of DEQ's financial programs. Dick Wyatt, IWRB member, explained their water master plans. Jim Wrigley, Wells Fargo Bank, discussed water project funding and explained ways the two boards might be able to coordinate joint funding of projects. Board members and staff discussed the growing demands placed on small water and sewer systems by federal regulations, and the need to coordinate and make the application process easier. Joe Jordan, Chairman of the IWRB, stated his support for joint funding and coordination of the application process.

Staff presented overviews of the IWRB and DEQ planning programs. Bill Graham gave an overview of the Comprehensive State Water Plan process and Dave Mabe talked about the TMDL process. Nate Fisher, Office of Species Conservation, provided information on the subbasin planning process. Opportunities to coordinate planning and information gathering activities were discussed.

Karl Dreher, Director of IDWR, discussed revisions to the Underground Injection Control rules requested by the Environmental Protection Agency. The EPA has requested six significant changes to the rules for the state to retain primacy of the program. The IDWR is working to develop rules that will meet the needs of the EPA and the IDWR.

Director Steve Allred and Director Karl Dreher both stated their support for collaboration and coordination of efforts. DEQ will look at better ways to coordinate efforts with the IDWR and the IWRB. Director Allred stated there is great need and confusion in small communities and water systems regarding regulations and opportunities for funding projects. Director Dreher stated he would some day like to see a consolidation of activities to combine the subbasin plans of the Northwest Power Planning Council, the State Water Plans, and the TMDL process into one effort and one document.

The joint work session adjourned at 12:00 p.m.

The Board of Environmental Quality convened on October 18, 2001 at 1:00 p.m.:

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
Nick Purdy, Member

BOARD MEMBERS ABSENT:

Marguerite McLaughlin, 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
Keith Donahue, DAG, DEQ
Dean Ehlert, State Waste and Remediation Program
Paula Gradwohl, Paralegal, Administrative Rules Coordinator
Orville Green, Administrator State Waste Management & Remediation
Bill Jerrel, Loan Programs Manager
Barbara Jewell, Remediation Environmental Regional Manager
Jim Johnston, Idaho Falls Regional Administrator
Kate Kelly, Administrator, Air Quality Program
Melissa Thompson, Water Quality Science Officer
Kathleen Trever, INEEL Oversight Program

OTHERS PRESENT:

David Atkinson, Ph.D, Idaho National Engineering and Environmental Laboratory (INEEL)
Jack Barraclough, Idaho State Representative
Bill Becker, INEEL
Robert Breckenridge, INEEL
Jay Calderwood, Teton County Commissioner
Alice M. Campbell, Upper Valley Rep. Women
Darwin Casper, Jefferson Co. Commissioner
Karla Covington, private citizen
Michael Covington, private citizen
Roy Eiguren, Givens Pursley, on behalf of American Ecology
Beth Elroy, Monsanto
Jane Gorsuch, Intermountain Forest Association
Lisa Green, Department of Energy (DOE)

Dennis Green, DOE
Melinda Hamilton, INEEL
Peggy Hinman, private citizen
Chad Hyslop, Amstran Ecology
Alan Jines, DOE Public Affairs
Jack Lyman, Idaho Mining Assoc.
Clay Nichols, DOE
Scott Nicholson, American Ecology
Teresa Perkins, DOE
Steve Pief, private citizen
Donald Rasch, DOE
Dick Rush, Idaho Assoc. of Commerce & Industry
Kortney Rush, Post Register
Ralph J. Steele, Bonneville County Commissioner

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 were received.

AGENDA ITEM NO. 1: ADOPTION OF MINUTES

a. May 25, 2001 Board Meeting

➤ **MOTION:** Dr. Randy MacMillan moved the minutes of the May 25, 2001 Board meeting be adopted as prepared.

SECOND: Paul Agidius

VOICE VOTE: Motion passed by unanimous vote; 1 absent (Marguerite McLaughlin)

b. June 14, 2001 Board Meeting

➤ **MOTION:** Dr. Randy MacMillan moved the minutes of the June 14, 2001 Board meeting be adopted as prepared.

SECOND: Dr. Joan Cloonan

VOICE VOTE: Motion passed by unanimous vote; 1 absent (Marguerite McLaughlin)

AGENDA ITEM NO. 2: ELECTION OF OFFICERS

Nick Purdy nominated Don Chisholm as chairman. No other nominations were received.

➤ **MOTION:** Marti Calabretta moved Don Chisholm be elected chairman of the Board by acclamation.

SECOND: Paul Agidius

VOICE VOTE: Motion passed unanimously; 1 absent (Marguerite McLaughlin)

Dr. Randy MacMillan nominated Paul Agidius as vice chairman. No other nominations were received.

- **MOTION:** Dr. Joan Cloonan moved Paul Agidius be elected vice chairman of the Board by acclamation.
SECOND: Marti Calabretta
VOICE VOTE: Motion passed unanimously; 1 absent (Marguerite McLaughlin)

Paul Agidius nominated Marti Calabretta as secretary. No other nominations were received.

- **MOTION:** Nick Purdy moved Marti Calabretta be elected secretary of the Board by acclamation.
SECOND: Paul Agidius
VOICE VOTE: Motion passed unanimously; 1 absent (Marguerite McLaughlin)

AGENDA ITEM NO. 3: DIRECTOR'S REPORT

Director Steve Allred reported substantial progress is being made in the air permitting program. A schedule was set at the beginning of this fiscal year to clear up the backlog. The program is on schedule. He distributed a report prepared for the Joint Finance and Appropriations Committee on air quality permitting activities from July 1 through September 30, 2001 (Attachment 8).

Director Allred also briefly discussed the proposed clean-up plan for the Coeur d'Alene Basin, the status of court actions regarding the TMDL process, actions being taken by DEQ to ensure adequate safety and security procedures, and possible affects of holdbacks on DEQ's budget.

Director Allred distributed a report, *Nitrates in Ground Water A Continuing Issue for Idaho Citizens*, (Attachment 9) and stressed his continuing concern for groundwater quality. There are specific areas within 22 of 44 counties in Idaho where a pollutant is in excess of the drinking water standards. People who live in rural areas and have individual domestic wells are most at risk. The Director emphasized this situation is entirely unacceptable and must be turned around. All activities within DEQ are now required to consider the impact on groundwater quality. This problem developed over many years, and it will take many years to resolve. DEQ is encouraging the cities, counties, and other non-governmental organizations to help on the front end by designing best management practices, programs, zoning, etc. to help solve the problem and develop solutions.

AGENDA ITEM NO. 4: RULES FOR NUTRIENT MANAGEMENT, DOCKET NO. 58-0116-0101 (PENDING RULE)

Dave Mabe, Administrator, State Water Quality Program, explained the purpose of this docket is to repeal the rules because statutory authority no longer exists. During the 2000 legislative session, Senate Bill 1426 was passed creating the Department of Environmental Quality. In addition to several technical corrections, SB1426 deleted Section 39105(3)(o), Idaho Code, which contained authority for the adoption of a state nutrient management plan and promulgation of rules to implement the plan. No comments were received on the proposal to repeal the rules; however, a request for a public hearing was received. A meeting was held with the parties requesting the hearing to explain the reason for the repeal of the rules and discuss alternative tools being used to protect groundwater quality. The request for hearing was then withdrawn.

- **MOTION:** Dr. Joan Cloonan moved the Board repeal the Rules for Nutrient Management as presented in the final proposal under Docket No. 58-0116-0101.
SECOND: Paul Agidius
VOICE VOTE: Motion passed by unanimous vote; 1 absent (Marguerite McLaughlin)

AGENDA ITEM NO. 5: RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO, DOCKET NO. 58-0101-0102 (PENDING RULE)

Kate Kelly, Administrator, State Air Quality Program, explained this docket amends the air quality rules to add a sentence to the section dealing with petroleum remediation efforts. That section allows the rapid and effective remediation of petroleum spills and leaks into soil and groundwater while protecting the environment and public health. However, there is a potential conflict with Section 513 of the air rules dealing with good engineering practices and dispersion techniques in permitting sources with stacks. In order to allow DEQ the flexibility and discretion to continue to deal with petroleum remediation, this conflict must be resolved. No comments were received on the proposed rule change.

- **MOTION:** Dr. Randy MacMillan moved the Board adopt the Rules for the Control of Air Pollution In Idaho as presented in the final proposal under Docket No. 58-0101-0102.
SECOND: Dr. Joan Cloonan
VOICE VOTE: Motion passed by unanimous vote; 1 absent (Marguerite McLaughlin)

AGENDA ITEM NO. 6: RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO, DOCKET NO. 58-0101-0103 (PENDING RULE)

Kate Kelly reported this docket is an amendment to the rules to provide clarification regarding Section 861, Standards of Performance for Hospital/Medical/Infectious Waste Incinerators. In 1999 DEQ promulgated Section 861, as directed by the Legislature in § 39-128, Idaho Code. This proposed rule simply clarifies that all owners or operators of hospital/medical/infectious waste incinerators subject to Section 861 must comply with the provisions of §39-128, Idaho Code. The proposed rule also updates citations to the federal regulations incorporated by reference to July 1, 2001 in order to maintain conformance with EPA's regulations as well as fulfilling the requirements of Idaho's delegation agreement with EPA under Section 112(l) of the Clean Air Act. No comments were received.

- **MOTION:** Dr. Joan Cloonan moved the Board adopt the Rules for the Control of Air Pollution in Idaho as presented in the final proposal under Docket No. 58-0101-0103.
SECOND: Dr. Randy MacMillan
VOICE VOTE: Motion passed by unanimous vote; 1 absent (Marguerite McLaughlin)

AGENDA ITEM NO. 7: RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO, DOCKET NO. 58-0101-0002 (PENDING RULE)

Kate Kelly explained the Board adopted this rule last summer as a temporary rule. The rule creates a "permit by rule" which is a streamlined permitting process for portable equipment such as rock crushers and asphalt plants. The temporary rule has been in place since June 2001 and has been used by several facilities. A few minor changes were made to the rule as a result of public comments.

Marti Calabretta questioned whether the rule dealt with situations such as the temporary asphalt plant that caused the problems Michael Covington experienced in Jefferson County. Ms. Kelly stated she was not familiar with the situation in Jefferson County. She noted it was not unusual for rock crushers and asphalt plants to locate together on a project.

➤ **MOTION:** Nick Purdy moved the Board adopt the Rules for the Control of Air Pollution in Idaho under Docket No. 58-0101-0002. He further moved that the Board adopt the revisions included in the final proposal as amendments to the previously adopted temporary rules, with the amendments becoming effective October 19, 2001.

SECOND: Dr. Randy MacMillan

DISCUSSION: Marti Calabretta was uncomfortable with the rule because it was her understanding that the rule would allow such operations to be set up and self-regulated by the owners of the operation. She was concerned that the public would not be able to take complaints and enforcement issues to a regulating authority other than the owners of the operations, and that enforcement actions would be dependent on the accuracy of the complaint logs maintained by the owners. Director Steve Allred clarified the public would be able to bring complaints to DEQ. The rule does not restrict the public to filing complaints with the owners. The public is welcome to file a complaint with DEQ and DEQ would be obligated to investigate the complaint. Director Allred believed the rules would actually improve enforcement. Ms. Calabretta stated that if, in fact, DEQ would act on a citizen complaint and not just refer it back to the owner, she could support the rule.

VOICE VOTE: Motion passed by unanimous vote; 1 absent (Marguerite McLaughlin)

AGENDA ITEM NO. 8: SOLID WASTE MANAGEMENT RULES, DOCKET NO. 58-0106-0101 AND 0102 (PENDING RULE)

Dean Ehlert, Solid Waste Program Coordinator for DEQ, advised these rules were developed at the request of the Joint Legislative Task Force on the Environmental Commonsense Initiative and went through the negotiated rulemaking process. The negotiated rulemaking committee was comprised of representatives from industry, cities, counties, local health districts, and other state agencies. The proposed rules would regulate non-municipal solid waste landfills, transfer stations, and solid waste processing facilities. Hazardous waste and municipal waste have detailed federal regulations and comprehensive state regulations; however, non-municipal solid waste does not have a comprehensive federal program and is left up to the state. The proposed rules contain siting, operating, and closure requirements for regulated facilities and would ensure statewide consistency for non-municipal solid waste management. They would provide greater protection to groundwater, public health, and the environment. In addition, the rules would bring consistency and certainty to the management of solid waste and assist the DEQ regional offices in dealing with current solid waste issues.

Dean Ehlert reviewed revisions made to the proposed rules as a result of discussions in the work session. They include:

- Page 105, Section 001.03.a. – add another exemption reading, Waste otherwise regulated under department authorities.
- Page 106, Subsection b. – regarding slag and phospho-gypsum, delete the words ~~to be adopted by the Board~~ from v. and vi.
- Page 115, Section 013 – in the last sentence of the first paragraph, correct “. . . requirements of Subsection 013.01f prior to facility closure.” To read “. . . requirements of Subsection 013.01.g. prior to facility closure.”

Director Steve Allred emphasized the proposed rules do not provide new authorities to the agency and the director. The director already has these authorities by law. There are old rules, but they are not definitive and leave a tremendous amount of discretion to the director. Director Allred expressed his concern that people should be able to anticipate what the requirements are and that those requirements are applied uniformly. He was also concerned that counties and others are undertaking substantial financial investments without any degree of certainty that those investments will be found to be within the laws. Under the current situation, regulatory actions are taken against enterprises after the fact. He felt it was an important role of government to provide guidance up front.

Nick Purdy questioned why the rules on page 106, Section 001.03.b.iii., exempt agricultural solid waste “which is managed and regulated pursuant to rules adopted by the Idaho Department of Agriculture only when such rules are at least as protective of human health and the environment as these rules”. Mr. Purdy felt the exemption was too open ended and left too much to judgment. Dean Ehlert stated the exemption was included as a result of some issues DEQ dealt with involving cull onion and potato dumping. The Department of Agriculture rules dealing with this issue only address the potential impact to crops, they do not address public health and environment issues. The health districts and DEQ must deal with those issues. Mr. Purdy asked if the Department of Agriculture could expand their rules to avoid duplication of efforts. Steve Allred pointed out the Department of Agriculture does not have the authority to adopt rules for purposes other than plant health. He agreed that it does not make sense to have several agencies looking at the same issue. They may want to consider revising the laws.

Dr. Joan Cloonan asked for a clarification on Page 111, Section 009.04. Tier III Facility, regarding the term “hazardous substances.” She questioned whether the term was a defined term in the regulations, and referred only to those substances that are defined as hazardous substances. Dean Ehlert confirmed that the term hazardous substances is defined under the CERCLA regulations referenced on Page 107, Section 005.12 of the rules. She further questioned whether the term “materials” as used in Section 009.04 referred to only materials with high pathogen potential and not to hazardous materials. Dean Ehlert confirmed that the term materials referred only to materials with high pathogen potential and not to hazardous materials. The term “hazardous materials” was used as opposed to the term “hazardous waste,” which are regulated separately. Dr. Cloonan was concerned because if the term hazardous materials were used, it would be an undefined term. Steve Allred suggested a comma be inserted after the term hazardous substances for clarity.

Dr. Cloonan also expressed concern with the wording in Section 009.04, “. . . or managing solid waste in a manner or volume that the Department determines may form toxic leachate or gases, or may pose a high risk to human health or the environment.” While not as broad as the old rules, it still allows the Department to determine whether something may pose a high risk to human health or the environment. There are no particular standards that define that risk.

Dr. Cloonan asked if it was anticipated that some of the disposal of cull onions and cull potatoes would fall under the Tier I or Tier II facility requirements. Dean Ehlert advised it would be handled on a case-by-case basis. A commercial site where greater quantities are handled would be treated differently than a one-time disposal site where they would handle volumes such as those listed in the definitions of the tier facilities. There is a possibility to go to a lower classification under some circumstances.

Don Chisholm suggested a change be made under the general operating requirements on Page 119, Section 035.03 to add language to the signs to inform the public what types of waste are accepted at the site and directing them to alternative sites for other types of waste. This might alleviate problems with people dumping waste alongside the road or in barrow pits because they are frustrated. Director Steve Allred agreed and directed the additional language be added to the rules.

Chairman Chisholm noted that individual conversations with Board members indicate they feel this rule should be sent back to the Department for additional work and be brought back to the November Board meeting. He stressed the Board has made no decision, but pointed out that this would allow for additional comments and discussions with staff. He asked those considering giving testimony to consider this in order to use time efficiently.

Representative Jack Barraclough discussed his experience and history with water quality issues in the state. He felt the rules should not be adopted based on the Jefferson County landfill because there was no potential for contamination. As Chairman of the House Environmental Affairs Committee, he believed that unless the rules are changed so they have the support of more people, they would not pass the legislature. As an original member of Environmental Commonsense Initiative Committee he stated the intent was that the rules be comparable or equitable but not more stringent than federal regulations. He urged the Board to look at the rules and see what changes could be made to balance environmental protection and industry.

Karla Covington, resident of Bonneville County, testified in support of the rules. She discussed how Idaho's current regulations concerning nonmunicipal solid waste landfills have affected her life and family. When they purchased their home in 1992, there was an old gravel pit across the street that was almost depleted. She was told by the county that the area was zoned as residential/agricultural, but the gravel pit was grandfathered in and was supposed to sit empty once depleted. In 1995 the county turned the gravel pit into a construction demolition landfill and tore down the trees that sheltered the view of the area. No public notice was ever given of the action, and there was no opportunity for comment. Upon investigating the situation, she learned that there are no laws in Idaho to provide for the enforcement of local county zoning regarding nonmunicipal landfills. District Seven Health Department was contacted with pictures (Attachment 10) of violations that were occurring on a regular basis at the landfill, but the problems continued. Ms. Covington believed this was due to the fact that the governing board of the district was made up of county commissioners – the same county commissioners who own and operate the landfill. Numerous problems developed with the operation of the landfill including:

- The landfill was open 24 hours a day, seven days a week for public dumping
- Hazardous waste has been dumped and buried, including oil, transmission fluid, antifreeze, car batteries, D-con poison, veterinarian supplies, household garbage, dead animals, manure, tires, lawnmower motors with gas and oil still in them, etc.

The Covingtons are very concerned about the hazardous waste because the landfill is less than 200 feet upgradient from their domestic well. Having a poorly run landfill right across the street has also caused their home to depreciate in value by 30%. They are now involved in a lawsuit over the matter. After three years of working with state agencies, they have found no relief from the problems. Ms. Covington stated she fears for her family's health, and urged the Board to adopt the rules to prevent other families from having to face such problems. The rules are needed to provide clear-cut guidelines on how we site, operate, and govern nonmunicipal

landfills in the state. She believed her personal experiences are an example of what happens when these facilities are left to operate without the benefit of well-defined rules. Ms. Covington commented that she believed Representative Barraclough had failed to investigate both sides of the issue and urged him to do a full and complete investigation of the matter.

Mike Covington, resident of Bonneville County and husband of Karla Covington, discussed health problems his family had experienced due to a portable asphalt plant that had been set up at the gravel pit across from their home on May 28, 1998. By July of that year, the children, his wife, mother-in-law, and various pets and livestock had all developed respiratory problems and required medical care. When DEQ investigated and tested emissions, they found the asphalt plant was up to four times over the acceptable particulate emissions. Mr. Covington discussed problems he experienced getting the District Seven Health Department to respond to their concerns over the violations and continuing problems with the landfill. He stressed that the proposed rules were needed because, when left alone, people cut corners in an attempt to save money or effort. He urged the Board to adopt the proposed rules to protect the public from government and public agencies.

Dick Rush, Vice-president for Natural Resources for the Idaho Association of Commerce and Industry, submitted written comments (Attachment 11) and testified against the proposed rules. He discussed the financial problems the forest products industry, agriculture, and other industries are currently experiencing. He believed the proposed rules would substantially increase the cost of maintaining current nonmunicipal waste facilities or establishing new ones. He questioned how the new regulatory program would be managed by DEQ staff. He noted that in the response to public comments, DEQ stated they received five new positions for solid waste management. Mr. Rush checked with the Division of Financial Management, the Governor's office, and Legislative Services and was told no new positions were authorized for DEQ. He felt this was misleading because it gave the impression that the Legislature endorsed these rules and that is not the case. An additional concern is rather broad wording in the fee schedule that would allow increases in the fees based on the Department's expenses reviewing a matter. He also believed the rules were more stringent than the federal rules, and that there was no public health or environmental need shown for such comprehensive and all-encompassing rules. He commented that DEQ exceeded the direction of the Environmental Commonsense Committee in creating the rules, and that the public health districts, county and city governments, and industry cannot afford the extra cost the proposed rules would cause. IACI requested the proposed rules be rejected by the Board and referred back to DEQ to develop rules that comply with the direction given by the legislative Environmental Commonsense Committee.

Jane Gorsuch, Intermountain Forest Association, discussed the concerns of the members of the association. They feel the proposed rules would increase the cost of doing business in an already stressed industry. There are legacy issues from 100 years of logging in Idaho that will create instant problems with old residuals and siting issues. They are also concerned with the volume levels set for the tiers, and suggested extending the closure date to allow a reasonable period to site a new facility for log yard and mill residuals. The IFA would like to work with DEQ to develop a landfill alternative for the logging industry using the technical guidance manual developed by the Technical Guidance Committee for Log and Mill Yard Debris. That committee is in the process of being reconstituted to address their concerns before the end of the year. Ms. Gorsuch feared the proposed rules could go through before the Committee could act, and would then define the perimeters of the debate they would enter into with DEQ.

Jay Calderwood, Teton County Commissioner, stated the county is currently struggling with another unfunded mandate they cannot afford. Teton County and Fremont County are being forced to conduct groundwater monitoring at their landfills by an unfunded mandate. They estimate the monitoring will cost the county around \$30,000 per year. This represents over one-third of the landfill budget. The county has a small population of 110,000 who will have to bear the financial burden of any additional expenses. Commissioner Calderwood asked for the Board's help in preventing any more unfunded mandates.

Peggy Hinman attended the negotiated rulemaking and submitted written comments in support of the proposed rules (Attachment 12).

- **MOTION:** Marti Calabretta moved the Board return rule Docket No. 58-0106-0101 to DEQ for review and revision. The review and revision effort should be focused on the issues identified by the 1996 Commonsense Environmental Taskforce and address only issues clearly associated with threats to human health and the potential for environmental damage.

SECOND: Dr. Joan Cloonan

DISCUSSION: Marti Calabretta expressed tremendous concern with the difficulties being experienced in getting enforcement actions under the current situation. Such difficulties have also been encountered in her region, and a problem clearly exists. Ms. Calabretta stated it was not clear to her whether the proposed rules would address or prevent the type of situation the Covingtons are facing. She discussed the struggle the people in Northern Idaho have faced dealing with government, and commented she was very sensitive to the problems and concerns of the Covingtons. She urged them to continue to be tenacious about reporting violations. She questioned whether the rules were being proposed due to one incident at the expense of already stressed industries, and urged DEQ to develop creative solutions. Ms. Calabretta emphasized she was very sensitive to the difference between proven public health and environmental threats and perceived threats.

Dr. Joan Cloonan clarified that in seconding the motion, she did not want to give the impression that she believed we should not have such rules. She served on the Environmental Commonsense Taskforce and was chairman of the solid waste committee in 1996. She felt the existing rules needed to be changed and updated to eliminate antiquated provisions and requirements such as the "seven deadly sins." Dr. Cloonan agreed that consistency and predictability are needed in the rules. They should be understandable, user-friendly, and precise in language. She supported sending the rules back to DEQ to ensure they reflect what was intended by the Environmental Commonsense Task Force.

Paul Agidius was concerned that the language of the motion was too restrictive. He wanted to make sure the review included economic feasibility and impact and extending finalization or implementation dates.

Randy MacMillan felt a fundamental guiding principle for the Board should be the protection of public and individual health and the environment in a way that makes sense for Idaho. He commented that the Department should not be held dependent on the state legislature or the Environmental Commonsense Taskforce in determining whether or not to develop rules. The Department's mission ought to be to protect public health and the environment and if they see a need, they should have the right to act independent of the legislature or the taskforce. He urged that the revisions to the rules be done soon and that they ensure better enforcement.

Nick Purdy favored sending the rules back for revision, but was not comfortable with the motion because of the limitations it sets. He felt the rule revision should address existing sites and grandfather them in or allow them to be phased out to prevent serious economic

impact. Paul Agidius agreed and felt deleting the word “only” from the motion would solve the problem.

AMENDMENT: Nick Purdy moved the motion be amended to delete the restrictive language (delete the word “only” and change the words “be focused” to “address.” The maker of the motion agreed to the amendment.

SECOND: Joan Cloonan

VOICE VOTE ON AMENDMENT: Motion passed by unanimous vote; 1 absent (Marguerite McLaughlin)

VOTE ON MAIN MOTION: Motion passed by unanimous vote.; 1 absent (Marguerite McLaughlin)

AGENDA ITEM NO. 9

RULES REGULATING THE DISPOSAL OF RADIOACTIVE MATERIALS, DOCKET NO. 58-0110-0101

Dean Ehlert stated this rule implements the 2001 legislation enacted under House Bill 192 wherein DEQ was directed to develop rules specifying radioactive materials or other radioactive material occurring naturally that may be disposed of at a commercial hazardous waste facility or site. This proposed rule will establish radiation protection standards for the disposal of radioactive materials not subject to regulation under the Atomic Energy Act of 1954, as amended (AEA). DEQ received public comments concerning the proposed rule and has revised the initial proposal. The following changes are also recommended as a result of discussions at the worksession:

- Page 68, 001.01 and .02, Title and Scope – strike the reference to the U.S. Nuclear Regulatory Commission.
- Page 69 – Add a definition for “byproduct materials” to read: **Byproduct material.** Byproduct material means: a. any radioactive material except special nuclear material yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; and b. the tailings or waste produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content.
- Page 69, 010.09.a. – Delete a. Naturally Occurring Radioactive Material.
- Reference NRC

Roy Eiguren, Attorney for the law firm of Givens Pursley, testified on behalf of his client, American Ecology. American Ecology operates the Envirosafe facility in Grandview, Idaho. The types of materials regulated in the proposed rules could be imported into and disposed of at that facility. They took part in the negotiated rulemaking and fully support the rule. He noted that all parties involved in the rulemaking supported the proposed rule. The negotiated rulemaking committee worked together collaboratively with the Snake River Alliance to create a positive result. Mr. Eiguren urged to Board to adopt the proposed rules.

- **MOTION:** Dr. Joan Cloonan moved the Board adopt, as temporary and pending rules, the Rules Regulating the Disposal of Radioactive Materials Not Regulated by the U.S. Nuclear Regulatory Commission Under the Atomic Energy Act of 1954 as Amended, as presented in the final proposal as amended on October 18, 2001 under Docket No. 58-0110-0101, with the temporary rules becoming effective October 19, 2001.

SECOND: Dr. Randy MacMillan

VOICE VOTE: Motion passed by unanimous vote; 1 absent (Marguerite McLaughlin)

Dr. Randy MacMillan discussed the growing concern nationally and internationally about the presence of pharmaceutical agents and similar types of compounds in the surface waters and perhaps even the groundwater of the United States. The pollution may be coming from sewage treatment plants, confined animal feeding operations, or other facilities – there are a whole host of possibilities. The USGS is currently doing studies. The main question of the scientific and regulatory community is whether or not those minute quantities of compounds have any biological impact. Marti Calabretta asked Dr. MacMillan to provide her with any reference lists or mailing lists he might receive so she could learn more about the topic.

Chairman Don Chisholm reported he recently attended a tour conducted by the Idaho Forest Products Commission in Northern Idaho at Bonners Ferry and Sandpoint. The tour covered forest practices, forest diseases, and the efforts of the industry to implement technology to ensure worker safety and protect the environment. Chairman Chisholm felt it was a valuable and educational experience and recommended it to the other Board members, should they have an opportunity to attend in the future.

Paul Agidius reported he attended an Environmental Protection Agency meeting in Spokane, Washington regarding the TMDL process. Federal agencies, the states and the tribes attended to discuss the temperature standards for the Columbia River and the lower part of the Snake River. Mr. Agidius felt the meeting was rather frustrating and there was little consensus with the EPA Region X position.

Nick Purdy has been attending local meetings regarding site/source assessment of wells for aquifer determination and protection. He recently toured the sewage treatment plant in Blaine County. Approximately 800 gallons per minute is discharged into the Wood River from the plant.

a. Meeting Schedule for 2002

Director Steve Allred recommended the Board meet in January or early February so they could meet with the appropriate legislative committees early in the session. He felt it was important for the Board to meet with the germane committees. Representative Jack Barraclough agreed and felt the Board should meet with both the House and Senate committees. Chairman Chisholm directed the Board's assistant to schedule the meetings.

The Board scheduled meetings for:

- February 6 and 7 in Boise, Idaho
- April 24 and 25 in Twin Falls
- June 19 and 20 – location to be determined
- October 16 and 17 – location to be determined
- November 13 and 14 in Boise

Director Allred extended an invitation Board members to attend the DEQ senior management meetings and the department-wide meetings. If they are interested, members can contact the Director's office for more information.

b. Docket Status Reports

Paula Gradwohl, administrative rules coordinator for DEQ, reviewed the Promulgation Status Report for DEQ Administrative Rulemaking and the Contested Case Status Report. A drinking water rule regarding engineering standards for the design, construction, and operation of public water systems will begin negotiated rulemaking soon. The rule will come to the Board next year.

The meeting adjourned at 4:15 p.m.

Donald J. Chisholm, Chairman

Marti Calabretta, Secretary

Debra L. Cline, Administrative Assistant and Recorder

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