



State of Idaho

DEPARTMENT OF ENVIRONMENTAL QUALITY
BOARD OF ENVIRONMENTAL QUALITY

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Toni Hardesty, Director

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IDAHO BOARD OF ENVIRONMENTAL QUALITY

MINUTES

October 6, 2010

The Board of Environmental Quality convened on October 6, 2010 at 8:30 a.m. at:

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

ROLL CALL

BOARD MEMBERS PRESENT

Craig Harlen, Chairman
Nick Purdy, Vice-chairman
Kermit Kiebert, Secretary
Dr. John Cloonan, Member
Dr. John R. "Randy" MacMillan, Member
Carol Mascareñas, Member

BOARD MEMBERS ABSENT

None

DEPARTMENT OF ENVIRONMENTAL QUALITY STAFF PRESENT

Toni Hardesty, Director
Martin Bauer, Administrator, Air Quality Division
John Brueck, Hazardous Waste Regulation & Policy Coordinator, Waste & Remediation Division
Barry Burnell, Administrator, Water Quality Division
Jess Byrne, Intergovernmental Affairs Coordinator
Stephen Coe, Regional Airshed Manager, Boise Regional Office
Douglas Conde, Senior Deputy Attorney General, DEQ
Holly Goodman, Assistant to the Board
Orville Green, Administrator, Waste & Remediation Division
Susan Hamlin, Deputy Attorney General, DEQ
Lance Nielsen, Drinking Water Program Manager, Water Quality Division
Mike Piechowski, Water Quality Engineer, Water Quality Division
Dan Redline, Regional Administration, Coeur d'Alene Regional Office*
Suzanne Scheidt, Drinking Water Supervisor, Coeur D'Alene Regional Office*
Steve Tanner, Regional Engineering Manager, Coeur d'Alene Regional Office*
Paula Wilson, Rules Coordinator

**joined via telephone*

OTHERS PRESENT:

Rocky Barker, The Idaho Statesman
Bonnie Butler, State of Idaho, Office of the Governor
Justin Hayes, Idaho Conservation League
Becky Johnstone
Alex LaBeau, Idaho Association of Commerce & Industry
Jack Lyman, Idaho Mining Association
Mayor Mac Pooler, City of Kellogg*
Keith Reynolds, State of Idaho, Division of Financial Management
Jayson Ronk, Idaho Association of Commerce & Industry
Mark Snider, United Water Idaho
Lynn Tominaga, Idaho Ground Water Users Association
Courtney Washburn, Idaho Conservation League
Donald Wind, P4 Production, LLC
**joined via telephone*

- ❖ All attachments referenced in these minutes are permanent attachments to the minutes on file at the Idaho Department of Environmental Quality. To obtain a copy, contact the Board Assistant at (208) 373-0240.

PUBLIC COMMENT PERIOD

Chairman Craig Harlen opened the floor to public comments on topics not specifically included on the agenda. No comments were received.

AGENDA ITEM NO. 1: DIRECTOR'S REPORT

Toni Hardesty, Director, updated the Board on current issues. She noted that DEQ will submit three pieces of legislation regarding the following issues:

- Crop Residue Burning Program. This program is currently going through the negotiated rulemaking process. A more streamlined approach for dealing with propane flaming of topsoil and cultivated fields is needed, along with statutory language changes.
- Underground Storage Tanks (USTs). State penalty policy needs to be aligned with the federal policy program.
- Anti-degradation Rulemaking. Definition changes within the statute are needed.

Director Hardesty gave a brief report on DEQ and budget issues. She noted that DEQ currently has 33-35 vacancies and that they are proceeding cautiously although no holdbacks in this fiscal year are expected. Vacancies due to attrition will be addressed first. DEQ will communicate to constituents when reduced manpower affects turnaround time. She noted that the Beneficial Use Reconnaissance Monitoring Program has been suspended by DEQ due to budgetary constraints for the past two years. DEQ's Outreach and Education opportunities have also been adversely impacted and the agency's Planning Division has been eliminated.

Director Hardesty gave a brief update on the Record of Decision (ROD) amendment which EPA is proposing in northern Idaho. The public comment period ends on November 23 and significant public comment is expected. In addition, DEQ is continuing to work with communities and the EPA on the controversial Spokane River TMDL issue. DEQ does not have a direct regulatory

role as the Idaho side of the border does not have a TMDL. The parties are exploring the possibility of pollutant trading.

Director Hardesty noted that the Governor's Office is processing applications for a new Board member. No appointment has been announced at this time.

AGENDA ITEM NO. 2: ADOPTION OF MEETING MINUTES

Chairman Harlen asked if the Board should adopt the minutes for the April 21, 2010 meeting as presented. Dr. MacMillan asked if the adoption of the minutes could be delayed to allow more time for review. Chairman Harlen agreed to delay adoption of April 21, 2010 until the meeting of November 10, 2010.

AGENDA ITEM NO. 3: RULES AND STANDARDS FOR HAZARDOUS WASTE, DOCKET NO. 58-0105-1001 (PENDING RULE) (Update of federal regulations incorporated by reference.)

Orville Green, Administrator, DEQ Waste and Remediation Division, said this rule is the annual adoption by reference needed to maintain consistency and stringency requirements of the Idaho Hazardous Waste Management Act. Mr. Green reviewed the four amendments in the proposed rule. The rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations. No public hearing was requested or held, no objections were filed and no public comments were received. There are no increased costs to the regulated community.

- **MOTION:** Dr. Cloonan moved the Board adopt the Rules and Standards for Hazardous Waste, Docket No. 58-0105-1001.
- **SECOND:** Dr. MacMillan
- VOICE VOTE:** Motion carried by unanimous voice vote.

AGENDA ITEM NO. 4: IDAHO RULES FOR PUBLIC DRINKING WATER SYSTEMS, DOCKET NO. 58-0108-1001 (PENDING RULE) (Rulemaking initiated to clarify definitions and facility design standards, reorganize certain sections such as filtration and disinfection process, and update citations to documents incorporated by reference.)

Barry Burnell, Administrator, Water Quality Division, presented a brief overview of the rule. He said this pending rule incorporates general housekeeping changes and updates numerous citations. The Drinking Water Advisory Committee also made recommended changes regarding cross-connection controls. Additional changes were made to reflect engineering concerns regarding facility design for screening of various types of tanks and overflows to protect against ingress of insects or vermin. Negotiations were held, although no request for a public hearing was requested. One comment from EPA was received regarding citation updates; no comments were received from the public. There are no increased costs to the regulated community and no controversial issues are included in this rulemaking.

- **MOTION:** Dr. MacMillan moved the Board adopt the Idaho Rules for Public Drinking Water Systems, Docket No. 58-0108-1001.
SECOND: Dr. Cloonan
VOICE VOTE: Motion carried by unanimous voice vote.

AGENDA ITEM NO. 5: **RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO, DOCKET NO. 58-0101-0904 (PENDING RULE) (Rulemaking initiated in response to petition filed by Idaho Conservation League and P4 Production, LLC, to develop air quality rules designed to limit and control mercury emissions from certain facilities.)**

Martin Bauer, Administrator, DEQ Air Quality Division, presented the mercury emissions rule. This negotiated rulemaking included representatives of environmental groups, industries, tribes and interested citizens. It is envisioned that the only existing source within the regulated community which may incur costs to control mercury emissions is P4 production, LLC. Future new sources, or existing sources proposing to modify above the threshold amounts may also incur costs. The comments received were all in support of this rule. The rule requires that construction of a new source, or modification of an existing source that has potential mercury emissions of 25 pounds per year or more, submit a permit application to include mercury best available control technology. Sources already regulated for mercury by EPA under the National Emissions Standards for Hazardous Air Pollutants (NESHAPs) are exempt from this requirement. Additionally, any source that has actual mercury emissions in excess of 62 pounds per year is required to have a Tier II Operating Permit, including mercury best available control technology.

Donald Wind, Environmental Protection Manager at the P4 facility in Soda Springs, and representing P4 Production LLC, commented in support of the rule. *Mr. Wind's testimony is attached to these Minutes as Exhibit A.*

Becky Johnstone, an interested individual, commented on the Payette National Forest Annual Fire Report of 2009 and noted an average of 45.61 pounds of mercury produced by forest fires each year. Ms. Stone also gave a brief overview of other sources of naturally occurring mercury. She asked that DEQ consider commenting on the Payette National Forest wildlife conservation strategy regarding mercury and PM2.5 releases. *The handout which Ms. Johnstone provided is attached to these Minutes as Exhibit B.*

Justin Hayes, Program Director for the Idaho Conservation League, commented in support of the proposed rule and in appreciation of the cooperation among the parties.

- **MOTION:** Dr. MacMillan moved the Board adopt the Rules for the Control of Air Pollution in Idaho as presented in the final proposal under Docket No. 58-0101-0904.
SECOND: Dr. Cloonan
ROLL CALL VOTE: Motion carried by unanimous roll call vote.

AGENDA ITEM NO. 6: RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO, DOCKET NO. 58-0101-1002 (PENDING RULE) (Update of federal regulations incorporated by reference.)

Martin Bauer said that this rule is a routine annual incorporation by reference of the final federal regulations promulgated as of July 1, 2010. This rulemaking is necessary to ensure that the Idaho Rules for the Control of Air Pollution in Idaho are consistent with federal regulations. The rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations. The proposed rule revises certain sections by deleting rule text that has become obsolete and it also incorporates by reference the Greenhouse Gas Tailoring Rule. This was not a negotiated rulemaking, but did include a public comment period and a public hearing. No comments were received. There are no additional costs to the regulated community for the majority of this rulemaking, however larger industrial sources may incur some additional costs to analyze and control for greenhouse gases if they construct or modify a facility that would trigger such requirements. The greenhouse gas rules are controversial and under litigation.

Mr. Bauer reviewed the three actions that prompted the regulation of greenhouse gases from large stationary sources. First, a Supreme Court ruling of 2007 found that greenhouse gases are air pollutants covered by the Clean Air Act and required EPA determination of public health impact. Second, by notice on December 15, 2009, EPA issued an endangerment finding, claiming that six long-lived and directly-emitted greenhouse gases such as carbon dioxide, methane, nitrous oxide, hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF6), may reasonably be expected to endanger public health. Third, EPA issued the Light Duty Vehicle Rule which regulates the amount of greenhouse gases that can be emitted from light-duty vehicles. These actions taken together create a regulated air pollutant as defined in the air quality permitting programs, requiring permitting of greenhouse gases when industrial facilities emit greater than a threshold amount. The existing threshold amounts as listed by the Clean Air Act as 250 tons or more per year or 100 tons per year from specifically listed sources. EPA recognized that these thresholds would require an overwhelming number of permits and impair the ability of state programs to manage air quality. In response, EPA published the Tailoring Rule which includes setting of greenhouse gas thresholds at a level for large industrial facilities only and also phases in permitting of facilities over time, minimizing the permitting burden on agencies and industries:

- **Phase I:** For the period from January 2, 2011 to June 30, 2011, the only industrial sources required to obtain a permit for greenhouse gases are those which would already be subject to major source permitting and which also have greenhouse gas emissions in excess of 75,000 tons per year or more. Similarly, for the Operating Permit program, only those sources currently subject to the Title 5 program would be required to address greenhouse gas emissions for their facilities.
- **Phase II:** Beginning July 1, 2011, PSD permitting requirements for greenhouse gases will apply to sources not otherwise regulated by PSD permitting requirements, and have greenhouse gas emissions of at least 100,000 tons per year for new construction of a facility or 75,000 tons per year for an existing facility. Additionally, Title V Operating Permit Program requirements will apply during Phase II to any facility with greenhouse gas emissions of 100,000 tons per year or more.

- **Phase III:** EPA commits to undertaking rulemaking regarding smaller sources and sources which can be permanently excluded from rulemaking. EPA will also consider a range of options to streamline greenhouse gas permitting. If a rule is established under Phase III, no permitting will be required for sources with less than 50,000 tons per year and will not take effect until at least April 30, 2016.

Mr. Bauer responded to questions from Board members and noted that the state should be able to handle the permitting burden with existing resources.

- **MOTION:** Nick Purdy moved the Board adopt the Rule for the Control of Air Pollution in Idaho as presented in the final proposal under Docket No. 58-0101-1002.

SECOND: Carol Mascareñas

VOICE VOTE: Motion carried by unanimous voice vote.

AGENDA ITEM NO. 7: CANYON COUNTY AND KUNA VEHICLE INSPECTION AND MAINTENANCE PROGRAM IMPLEMENTATION AND UPDATE

Stephen Coe, Regional Airshed Manager from DEQ's Boise Regional Office, gave a presentation of the Canyon County and Kuna Vehicle Inspection and Maintenance Program. He noted that this program was established by Idaho Statute 3916(b) and that the affected cities or counties were given three options for implementation: establish their own program; have DEQ run the program; or provide an equivalent alternative. Alternative programs which failed to meet reduction requirements defaulted to DEQ implementation of an emissions testing program. After conducting the RFP process, DEQ signed the contract with the turnkey service provider on February 16, 2010. This contract is for a five-year term and the program will be reviewed at that time. On June 1, 2010, testing began with 22 stations allowing 95% of motorists to be within five miles of a testing station. Mr. Coe also noted that a website was established (www.idahovip.org) to provide information about vehicle emissions testing in the Treasure Valley and that citizens can use the website to immediately determine their testing deadline.

Mr. Coe noted that approximately 18,000 tests and/or retests have been conducted since the program's inception and that approximately 350 tests are being conducted per day. The cost of the test is \$10.00 and testing is required every other year. He reviewed procedures for retests and repairs for failed vehicles, discussed license revocation for non-compliance, and gave a brief overview of the contested case process. *A copy of a sample "Petition Initiating a Contested Case" was handed out and is attached to these Minutes as Exhibit C.* Mr. Coe noted that the Canyon County and Kuna Vehicle Inspection and Maintenance Program has received national interest and recognition.

AGENDA ITEM NO. 8: DRINKING WATER SYSTEM CROSS CONNECTION CONTROL PROGRAM

Barry Burnell introduced the Drinking Water Program Manager, Lance Nielsen, and Mike Piechowski, Drinking Water Engineer, and noted that additional parties would be joining by phone for this agenda item: Dan Redline, Regional Administrator, DEQ Coeur d'Alene Regional

Office (CRO); Steve Tanner, Regional Engineering Manager, CRO; Suzanne Scheidt, Drinking Water Supervisor, CRO; and Mayor Mac Pooler, City of Kellogg.

Lance Nielsen began his presentation by stating that certain City of Sandpoint residents objected to residential cross connection controls and noted that the City of Sandpoint had exempted residential connections from the cross-connection control requirements. DEQ told the City that they were precluded from exempting residential properties as a group. Director Hardesty asked the Drinking Water Advisory Committee to review and evaluate the cross-connection control program and make appropriate recommendations. Mr. Nielsen defined “cross connection” as a connection between potable and non-potable water and “backflow” as the incident that happens in association with these cross connections. He detailed the corresponding economic and public health impacts, as well as testing and troubleshooting cross connection incidents. *Handouts entitled “Drinking Water Cross-Connection Control Programs” and “Briefing Paper on Cross Connection Control” are attached to these Minutes as Exhibits D and E, respectively.*

Mark Snider, Public Affairs Manager, United Water Idaho, gave a brief overview of two cross connection incidents in Eagle during June 2009. He described United Water incident response and homeowner education strategies.

AGENDA ITEM NO. 9: CONTESTED CASE AND RULE DOCKET STATUS REPORT

Paula Wilson reviewed the current contested case and rule docket status report. She noted that the mercury rule had been adopted earlier in today’s meeting. A Crop Residue Burning rulemaking is currently in process and is expected to come before the Board in 2011. Ms. Wilson noted that the proposed antidegradation implementation procedures rule was published on September 1, 2010, the public comment period ended on October 1, and this rule will come before the Board at its November 2010 meeting. Rules for reclamation and industrial wastewater will also be before the board at the November meeting. She noted that the City of Bliss contested case has been dismissed.

AGENDA ITEM NO. 10: ELECTION OF BOARD OFFICERS

Chairman Harlen opened the floor to nominations.

- **NOMINATION:** Carol Mascareñas nominated Nick Purdy for the position of Chairman of the Board.
SECOND: Dr. Cloonan
VOICE VOTE: Motion carried by unanimous voice vote.

- **NOMINATION:** Dr. MacMillan nominated Carol Mascareñas for the position of Vice-chairman of the Board.
SECOND: Craig Harlen
VOICE VOTE: Motion carried by unanimous voice vote.

- **NOMINATION:** Nick Purdy nominated Dr. Joan Cloonan for the position of Secretary of the Board.

SECOND: Kermit Kiebert

VOICE VOTE: Motion carried by unanimous voice vote.

AGENDA ITEM NO. 11: LOCAL REPORTS AND ITEMS BOARD MEMBERS MAY WISH TO PRESENT

The Board scheduled the next meeting for Wednesday, November 10, 2010.

Dr. MacMillan asked for clarification on language in the TMDL rule regarding “reasonable length of time” for the TMDL to be in effect before changes can be made to it. Doug Conde responded and commented that it would likely depend on the type of pollutant involved, the type of watershed involved and the scope of the TMDL. Mr. Conde noted that the Idaho Code requires that TMDLs be revisited every five years. Barry Burnell gave a brief review of the implementation process.

The meeting adjourned at 1:35 p.m.

Craig D. Harlen, Chairman

Kermit V. Kiebert, Secretary