



State of Idaho
DEPARTMENT OF ENVIRONMENTAL QUALITY
Board of Environmental Quality

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Dirk Kempthorne, Governor
C. Stephen Allred, Director

IDAHO BOARD OF ENVIRONMENTAL QUALITY

MINUTES

April 24, 2003

The Board of Environmental Quality convened via conference call on April 24, 2003 at 2 p.m.
at:

Idaho Department of Environmental Quality
1410 N. Hilton, Conference Rooms A & B
Boise, Idaho

ROLL CALL

BOARD MEMBERS PRESENT:

Paul C. Agidius, Chairman
Donald J. Chisholm, Member
Dr. Joan Cloonan, Member (appeared in person)
Craig Harlen, Appointed Member
Dr. J. Randy MacMillan, Vice-chairman
Nick Purdy, Member

BOARD MEMBERS ABSENT:

Marguerite McLaughlin, Member

DEPARTMENT OF ENVIRONMENTAL QUALITY STAFF PRESENT:

C. Stephen Allred, Director
Jess Byrne, Resource Officer
Debra Cline, Management Assistant to the Board
Doug Conde, Deputy Attorney General, DEQ
Paula Gradwohl, Administrative Rules Coordinator
Orville Green, Administrator, State Waste Management & Remediation Program
Jason Jedry, Administrative Services
Sharon Keene, Customer Resources
Dave Mabe, Administrator, Water Quality Program
Michael McIntyre, Water Quality Program
Jon Sandoval, Chief of Staff

OTHERS PRESENT:

George Fink, Ch2M Hill
Dick Rush, Idaho Association of Commerce and Industry
Suzanne Schaefer, SBS Associates

- ❖ 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) 373-0465.

AGENDA ITEM NO. 1: ADOPTION OF DECEMBER 18, 2002 MINUTES

- **MOTION:** Don Chisholm moved the Board adopt the December 18, 2002 minutes as prepared.
SECOND: Dr. Joan Cloonan
ROLL CALL VOTE: Motion carried unanimously.

AGENDA ITEM NO. 2: DIRECTOR'S REPORT – LEGISLATIVE WRAP-UP

Director Steve Allred welcomed new Board member, Craig Harlen. Mr. Harlen is a chemical engineer who specializes in metals extraction processing. He graduated from Montana State University and has spent most of his career working for phosphate mining and manufacturing companies in Eastern Idaho. He has extensive knowledge in solvent waste management and has been recognized by OSHA, the National Safety Council, and the Idaho Department of Lands for his achievements in safety and reclamation efforts.

Chairman Agidius welcomed Mr. Harlen to the Board. He replaces outgoing Board member, Senator Marti Calabretta. His area of interest is waste management and he is a member of the Democratic party. His term will run until July 1, 2007.

Director Allred congratulated Nick Purdy for being inducted into the Southern Idaho Livestock Hall of Fame. The recognition is well deserved, and DEQ is proud to have its Board member recognized.

Director Allred noted that this presentation was intended as a legislative wrap-up; however, the Idaho Legislature is still in session so the report will cover actions taken to date affecting DEQ. He distributed and discussed the 2003 Department of Environmental Quality Legislative Summary (Attachment 1) and the DEQ Summary & Status of Rules, 2003 Legislative Review (Attachment 2).

The DEQ budget that was approved is about \$2.3 million less in general fund dollars than the Fiscal Year 2002 budget. The majority of the reduction is across the board, with the largest amount taken out of the Water Quality Program. The cuts were taken from areas that would allow Idaho to maintain primacy of programs and meet the state match requirements for federal funding. The budget cutbacks will limit the amount of rulemaking DEQ will be able to conduct. The Department plans to do only rulemaking that is required to maintain primacy of programs. Another area impacted by the cutbacks will be the 303d list. There are a number of streams that might be eligible for removal from the list, but DEQ will not have the funds needed to gather the information necessary to remove them from the 303d list. Available funds will be focused on doing monitoring needed to maintain the schedule for the TMDL lawsuit. In summary, the flexibility needed to proactively deal with issues is drastically reduced under this budget.

DEQ does not anticipate any reduction in staff at this time. Staff has already been reduced through attrition in anticipation of the budget cuts. There is concern the Department will not be able to retain quality staff after three straight years of no salary increases. There have already been instances of valuable mid-level staff leaving for substantial salary increases.

Director Allred discussed the impacts of House Bill 150. The legislation was initiated by the Idaho Association of Commerce and Industry to require DEQ to use the best available data which has been subject to peer reviewed science and apply well established risk assessment methods when passing rules that are more stringent or broader in scope than federal rules. The initial legislation was amended in committee. There will be some changes in process, but DEQ was already complying with most of the requirements of the legislation. It may add as much as a year to the time it will take to bring some rules forward. The requirements may also add substantial costs for both DEQ and industry for rulemaking actions.

Don Chisholm felt high level discussions were needed to identify the goals and missions of DEQ and the Board and how the rulemaking process should work. Industry and the legislature need to decide if they want DEQ to serve all the people of the state or just be a foil for the EPA. The Board is comprised of members with extensive expertise in a broad range of environmental issues, and they closely review and consider the matters brought before them. It appears their efforts are not being fully considered in the rulemaking/legislative process. Chairman Paul Agidius stated the matter will be placed on a future agenda for further discussion. Director Allred agreed there should be an open discussion with the legislature about the role of the Board. He would also like to increase efforts to involve legislators in the Board's meetings so they can more fully understand the process the Board goes through in its rulemaking efforts.

Director Allred commented there seems to be a feeling that DEQ did not do well in this legislative session, but they actually fared as well as any other department. He briefly discussed the rules that were not adopted by the legislature.

Director Allred reported on legislation affecting DEQ including a number of bills regarding field burning.

There have been several changes in key staff at DEQ. Kate Kelly has been appointed as DEQ Boise Region Administrator. She did an outstanding job as administrator of the Air Quality Program. She accomplished the very difficult and controversial job of getting all the Title V permits issued and has now accepted a new challenge. Steve West, who was recently appointed as administrator of the Air Quality Program has left DEQ to accept a position in private industry. A candidate has not been selected to fill the position. It will be filled after the end of the legislative session. Kerby Cole has been appointed as Lewiston Regional Administrator. He has been filling in as acting administrator for quite some time and has done a very good job. He has the support of his staff, industry, and the tribe. Mark Dietrich, Pocatello Regional Administrator, was called into active military duty in Iraq and Tiffany Floyd has been appointed as acting administrator until he returns. She is doing a fine job handling the responsibilities.

Director Allred updated the Board on recent actions on the Coeur d'Alene Basin Commission and the Lake Management Plan, and the Department of Energy (DOE) lawsuit regarding the removal of transuranic waste from INEEL. These issues continue to be very controversial and will not be resolved soon.

There are indications that the DOE will not support paying \$500,000 for their Title V fee for next year. They also question whether they have the authority to make that payment for this year, and believe the current Title V fee rule does not meet the federal requirements for treating federal agencies the same as other entities. Director Allred noted that without the \$500,000 paid by DOE there will be a major problem with the Title V fees. He will discuss the matter with the Idaho Congressional delegation.

Dave Mabe reported there should be action on the Hells Canyon TMDL soon. A remaining issue is making the standards match up at the Oregon border. A temporary rule may be brought to the next Board meeting. He also updated the Board on the regional temperature criteria DEQ has been working on with EPA, Oregon, Washington, some tribal members, the Fish & Wildlife Service, and the NOAA Fisheries. The parties hope to resolve some of the temperature issues with this regional guidance approach.

Director Allred discussed the NPDES legislation that was proposed by DEQ, but failed to even be printed.

Dave Mabe updated the Board on the Potlatch NPDES permit for the Clearwater River. There is a great deal of local public opinion on the issue. The draft biological opinion came to a jeopardy conclusion. EPA believes there may be some errors in the basic assumptions that were made in the opinion that need to be corrected. The biological opinion may be modified and a number of the issues resolved. The main concern is whether the elevated temperature at the point of discharge impacts endangered fish. EPA is conducting modeling and trying to put together an approach that best describes the actual risks. A revised permit should be issued in the next month or so. Good progress is being made to find common sense approaches to deal with thermal issues in Potlatch's discharge.

Craig Harlen exited the conference call at 3:30 p.m.

Doug Conde reported on the pending contested cases and matters that may be coming before the Board as contested cases including the C. J. Strike case and two air quality permit contested cases (Potlatch and Simplot).

Dr. Joan Cloonan asked about the status of the hydrogen sulfide rule. Director Allred advised that this rule was withdrawn by the Board. There are several actions now taking place. The Board directed the Department to provide a discussion on the uncertainty factors from experts who deal with setting standards. DEQ has investigated having the Center for Disease Control (CDC) provide that briefing and it should be started soon. The CAFO rules issued by EPA were reviewed by a section of the National Academy of Sciences (the National Research Council). The Council stated in a preliminary report that there is a deficiency in the CAFO rules because they have failed to take action to include a standard for a number of pollutants including hydrogen sulfide and ammonia. The Council indicated they would issue suggested levels in their final report. Given the standing and impact of this organization in the scientific community, it does not seem prudent to go forward with a standard when this action is pending. Director Allred suggested the Board monitor the action of the Council. The numbers shown in the preliminary report were lower than those recommended by DEQ. The U.S. Department of Agriculture has also produced a preliminary report that contains hydrogen sulfide standards. These numbers are also lower than those discussed by the Board. These efforts may result in a

national standard being set, and should contain very credible peer reviewed information on what the standards should be.

The meeting adjourned at 3:50 p.m.

Paul C. Agidius, Chairman

Debra L. Cline, Management Assistant and Recorder