



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

May 28, 2003

The Board of Environmental Quality convened on May 28, 2002 at 2:00 p.m. at:

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

ROLL CALL

BOARD MEMBERS PRESENT VIA TELEPHONE:

Paul C. Agidius, Chairman
Donald J. Chisholm, Member
Craig D. Harlen, Member
Marguerite McLaughlin, Member

BOARD MEMBERS PRESENT IN PERSON:

Dr. Joan Cloonan, Member
Dr. J. Randy MacMillan, Vice-chairman
Nick Purdy, Member

BOARD MEMBERS ABSENT:

None

DEPARTMENT OF ENVIRONMENTAL QUALITY STAFF PRESENT:

Debra Cline, Management Assistant to the Board
Darrell Early, Deputy Attorney General, DEQ
Paula Gradwohl, Administrative Rules Coordinator
Lisa Kronberg, Deputy Attorney General, DEQ
Harriet Hensley, Deputy Attorney General
Pat Nair, Stationary Source Program

OTHERS PRESENT:

William Eddie, Idaho Conservation League
Justin Hayes, Program Director, Idaho Conservation League
Krista McIntyre, Attorney for J. R. Simplot Company
Steve Nelson, Cool Creek Environmental Associates

Krista Newberg, Advocates for the West
Christopher Pooser, Attorney for J. R. Simplot Company
Alan Prouty, Director of Environmental and Regulatory Affairs, J. R. Simplot Company

- ❖ 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.

CONTESTED CASE, J. R. SIMPLOT CO., AIR QUALITY TIER I OPERATING PERMIT AND PERMIT TO CONSTRUCT NO. 077-00006 (DON SIDING PLANT) - CONSIDERATION OF THE IDAHO CONSERVATION LEAGUE'S REQUEST TO HAVE ITS PETITION FOR REVIEW OF ORDERS DENYING INTERVENTION REVIEWED ON AN EXPEDITED SCHEDULE

- **Krista McIntyre, appeared on behalf of J. R. Simplot Company (Simplot).**
- **William Eddie appeared on behalf of petitioners, Idaho Conservation League (ICL).**
- **Lisa Kronberg, Deputy Attorney General, appeared on behalf of the Department of Environmental Quality.**
- **Harriet Hensley, Deputy Attorney General, represented the Board of Environmental Quality.**

Chairman Paul Agidius stated the Board was prepared to hear oral argument on the Idaho Conservation League's Request for an Expedited Petition, and that is the only issue before the Board at this meeting.

Don Chisholm noted that a document was just received by fax from the J. R. Simplot Company consenting to an expedited schedule. He asked if that would dispose of the issue except for scheduling the hearing. Chairman Agidius stated that while it does resolve the issue at hand, he felt some standards should be developed by the Board for handling requests for expedited hearings. An expedited schedule can place a burden on the parties and the Board, and there should be some standards for weighing the need for an expedited schedule versus the burden it could present.

- **MOTION:** Don Chisholm moved the Board grant the ICL's request for an expedited hearing on its Petition for Review of Orders Denying Intervention.

SECOND: Dr. Randy MacMillan

DISCUSSION: Dr. Joan Cloonan asked for a definition of the term "expedited hearing." Don Chisholm suggested the parties clarify what timeframe they are requesting. William Eddie stated it would meet ICL's request for an expedited review if the matter could be heard at the Board's June 18, 2003 meeting in Idaho Falls. He noted that ICL intends to file a reply brief. Krista McIntyre stated Simplot would defer to the Board's discretion as to what constitutes an expedited hearing. Simplot may file a reply brief if needed, and will make themselves available at the Board's convenience for hearing. Lisa Kronberg noted that DEQ did not take a position on ICL's Petition to Intervene; however, they do have a real interest in how the terms "direct and substantial interest" are defined under the contested case rules. DEQ plans to file a brief on May 30, 2003, which will analyze some administrative cases that used the terms "direct and substantial interest" and other case law.

AMENDMENT: Don Chisholm moved the motion be amended to include that the hearing will be held at 8:30 a.m. on June 18, 2003 at the Board meeting in Idaho Falls.

SECOND: Dr. Randy MacMillan agreed to the amendment to the motion.

ROLL CALL VOTE ON AMENDED MOTION: Motion passed unanimously.

Krista McIntyre observed that none of the parties had requested the opportunity for oral argument before the Board. If the Board finds there is adequate information from the briefs, oral argument may not be needed before a decision can be made. William Eddie requested the Board schedule oral argument in case there is a need to clarify issues and answer any questions that may come up at the last minute.

Don Chisholm asked the parties to address an issue of concern regarding public participation when they prepare their final briefs in this matter. He feared that the public may be unfairly excluded from the process if people are not allowed to intervene on a fairly liberal basis when issues come up later in the process and the public does not have to opportunity to comment. He felt it was important to uphold the spirit of the public participation features of the Clean Air Act in these proceedings. Mr. Chisholm believed this public participation issue should be addressed as the board develops its idea of what it means for a party to have a substantial interest in the outcome of the proceedings.

Chairman Paul Agidius set the reply brief schedule for Monday, June 9, 2003.

Bill Eddie requested the Board direct the hearing officer by order not to enter any final resolution of any issue in dispute in this case until the Board has acted on the Petition to Intervene. Krista McIntyre noted that Simplot does not have any issues pending at this time and does not anticipate any action being taken before the Board meeting on June 19.

Don Chisholm pointed out that there is the issue of ongoing negotiations between DEQ and Simplot, and hoped the parties would recognize that in fairness, they should not cut a deal that resolves the case before the Board has ruled on this Petition for Intervention. Chairman Agidius stated the Board would request that negotiations between DEQ and Simplot be held until after the Board has ruled on this matter at the June 19 meeting.

The meeting adjourned at 2:30 p.m.

Paul C. Agidius, Chairman

Debra L. Cline, Management Assistant and Recorder0