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DEQ Hearings Coordinator  
DOCKET NO. \_\_\_\_\_

BEFORE THE BOARD OF ENVIRONMENTAL QUALITY

STATE OF IDAHO

W. ALLEN FREEMAN,  
Petitioner,

v.

IDAHO DEPARTMENT OF ENVIRONMENTAL  
QUALITY,  
Respondent.

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) Docket No. 0101-11-04  
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) FINAL ORDER ON REVIEW OF  
) RECOMMENDED ORDER  
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I. INTRODUCTION

On May 13, 2011, W. Allen Freeman (“Freeman”), filed a *Petition Initiating Contested Case* (“Petition”), seeking review of the Idaho Department of Environmental Quality’s (“DEQ”) decision that the registration for his vehicle may be revoked because Freeman failed to comply with the emissions testing requirements established by Idaho Code § 39-116B. Following contested case proceedings, the hearing officer issued a *Recommended Order Granting Summary Judgment For Respondent, Idaho Department of Environmental Quality* (“Recommended Order”). Pursuant to Idaho Code § 67-5244, Freeman timely filed an *Exception to Recommended Order Granting Summary Judgment For Respondent, Idaho Department of*

*Environmental Quality*. DEQ filed *Respondent's, Department of Environmental Quality, Brief In Support Of The Recommended Order*. On February 16, 2012, after fully considering the record and the oral and written arguments of the parties, the Idaho Board of Environmental Quality ("Board") unanimously voted to affirm the Recommended Order, consistent with the Board's deliberations.

## II. STANDARD OF REVIEW

When reviewing a Recommended Order, the Board has the authority to "exercise all of the decision-making power that [the Board] would have had if [the Board] had presided over the hearing." Idaho Code § 67-5245(7). In reviewing the Recommended Order, the Board may review all of the evidence *de novo* and does so here. Pursuant to IDAPA 58.01.23.102, Freeman has the burden of proving the allegations in the Petition by a preponderance of the evidence.

## III. FINDINGS OF FACT AND PROCEDURAL BACKGROUND

In 2005, the Idaho Legislature, finding that the threatened deterioration of "the air quality in certain regions of the state . . . may endanger the breathability, economic potential, public health, natural beauty, recreational use and livability in various regions of the state[,]” enacted the Treasure Valley and Regional Air Quality Council Act ("Act"). Idaho Code § 39-6701 *et seq.* The Act created and required the Treasure Valley Air Quality Council ("Council") to develop a plan to "protect, preserve and, where necessary, improve the quality of air in a specified geographical area while accommodating private, public and commercial activities." Idaho Code § 39-6701(2). The Act defines the "Treasure Valley" as the geographic boundaries encompassed by Ada and Canyon counties. Idaho Code § 39-6705(8).

The Treasure Valley Air Quality Plan (“Plan”) was submitted to the 2007 Legislature and included a recommendation that a vehicle emissions testing program to protect and improve air quality be established in Ada<sup>1</sup> and Canyon counties. In April 2008, the Idaho Legislature enacted, and the Governor signed into law, Idaho Code § 39-116B, entitled Vehicle Inspection and Maintenance Program (“Vehicle I/M Program” or “Program”), which required DEQ to enter into rulemaking to establish the minimum standards for emissions testing if DEQ determined the following conditions were met:

- (a) An airshed, as defined by the department, within a metropolitan statistical area, as defined by the United States office of management and budget, has ambient concentration design values equal to or above eighty-five percent (85%) of a national ambient air quality standard, as defined by the United States environmental protection agency, for three (3) consecutive years starting with the 2005 design value; and
- (b) The department determines air pollutants from motor vehicles constitute one (1) of the top two (2) emission sources contributing to the design value of eighty-five percent (85%).

Idaho Code § 39-116B(1)(a) and (b).

In the event both conditions are met, Idaho Code § 39-116B(2) states that the Board “shall establish by rule minimum standards for an inspection and maintenance program for registered motor vehicles, not otherwise exempted . . . which shall provide for: (a) Counties and cities within the airshed that will be subject to the motor vehicle inspection and maintenance program.” In addition, the statute imposes the following duties on DEQ:

- (4) The Idaho transportation department shall revoke the registration of any motor vehicle identified by the department or its designee, or any city or county administering a program established under the provisions of this section as having failed to comply with such motor vehicle inspection and maintenance program, except that no vehicle shall be identified to the Idaho transportation department unless:

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<sup>1</sup> Ada County has administered a vehicle emissions testing program for over a decade. *See* 1999 Motor Vehicle Emissions Control Ordinance, title 6, chapters 1-3 of the Ada County Motor Vehicle Code.

(a) The department or its designee, or the city or county certifies to the Idaho transportation department that the owner of the motor vehicle has been given notice and had the opportunity for a hearing concerning the program and has exhausted all remedies and appeals from any determination made at such hearing; and

(b) The department or its designee, or the city or county reimburses the Idaho transportation department for all direct costs associated with the registration revocation procedure.

Any vehicle registration that has been revoked pursuant to the provisions of this section that is found to be in compliance with current emissions standards shall have the registration reinstated without charge.

Idaho Code § 39-116B(4)(a) and (b).

The “airshed,” as defined by DEQ pursuant to Idaho Code § 39-116B, includes the most populous counties, Ada and Canyon, as well as portions of other, less populated counties surrounding them. At the end of summer 2008, the airshed met the criteria specified in the law for implementation of a vehicle inspection program. Air quality monitoring data showed ozone design value concentrations were 0.077, 0.078, and 0.075 parts per million (ppm) for 2006, 2007, and 2008 respectively, above 85% of the National Ambient Air Quality Standards. 40 C.F.R. § 50.10 (2008). The determination that vehicle emissions constituted one of the top two emission sources contributing to ozone concentrations in the Treasure Valley airshed was based upon an enhanced 1999 Emissions Inventory (“EI”). Three in-house periodic EIs and a new enhanced 2008 EI have resulted in the same conclusion.

Formal Notice of Negotiated Rulemaking (“Notice”) was published in the Idaho Administrative Bulletin on January 7, 2009. The purpose of the rulemaking was to implement Idaho Code § 39-116B and establish the required minimum standards for a vehicle emissions testing program. The Notice advised that the text of the rule would be drafted by DEQ in conjunction with interested participants. The record indicates that Freeman attended the

negotiated rulemaking meeting on February 3, 2009 and was included in the distribution list for all subsequent meetings, rulemaking documents, and requests for comments. The final draft of the proposed rule was published in the June 3, 2009 Idaho Administrative Bulletin and on July 14, 2009, a public hearing was held.

When fulfilling its rulemaking duties and obligations, DEQ must comply with the procedural and substantive requirements of Idaho Code § 39-107D, which provides:

(1) The legislature directs that any rule formulated and recommended by the department to the board which is broader in scope or more stringent than federal law or regulations, or proposes to regulate an activity not regulated by the federal government, is subject to the following additional requirements: the notice of proposed rulemaking and rulemaking record requirements under chapter 52, title 67, Idaho Code, must clearly specify that the proposed rule, or portions of the proposed rule, are broader in scope or more stringent than federal law or regulations, or regulate an activity not regulated by the federal government, and delineate which portions of the proposed rule are broader in scope or more stringent than federal law or regulations, or regulate an activity not regulated by the federal government.

(2) To the degree that a department action is based on science, in proposing any rule or portions of any rule subject to this section, the department shall utilize:

(a) The best available peer reviewed science and supporting studies conducted in accordance with sound and objective scientific practices; and

(b) Data collected by accepted methods or best available methods if the reliability of the method and the nature of the decision justify use of the data.

The Notice stated, in relevant part:

**IDAHO CODE SECTION 39-107D STATEMENT:** This proposed rule does not regulate an activity not regulated by the federal government nor is it more stringent than federal regulations. The Clean Air Act requires, in marginal ozone nonattainment areas, a vehicle inspection and maintenance program. This proposed rule is broader in scope than the federal law as it applies to sources in an area not yet designated nonattainment. In addition, promulgation of this rule is required by Idaho Code 39-116B.

This proposed rule constitutes an important preemptive step for the Treasure Valley to take to attempt to avoid an ozone nonattainment designation. The ozone national ambient air quality standard is a standard designed to protect human health and the environment. It is clear under federal law that scientists

have determined that a vehicle inspection and maintenance program is an important control measure to implement for ozone reduction.<sup>2</sup>

On October 7, 2009, the Board adopted the rules and notice of their adoption and submission to the legislature was published on October 13, 2009. With the passage of Senate Concurrent Resolution 125, the Motor Vehicle and Inspection rules (“Rules”) became effective in March 2010. They are located in the Rules for the Control of Air Pollution in Idaho at IDAPA 58.01.01.517-526.

DEQ entered into a contract with SysTech International to implement a Vehicle I/M Program in Canyon County and the City of Kuna. Testing began on June 1, 2010. Freeman received notices to test his vehicle dated January 24, 2011, March 14, 2011 and April 15, 2011, but declined to have his vehicle tested. Pursuant to Idaho Code § 39-116B(4)(a), which requires that owners of motor vehicles subject to revocation be given notice and an opportunity for a hearing, Freeman filed his Petition on May 13, 2011. The Petition asserted that “DEQ used outdated information in legislative testimony to get 39-116B passed” and did not comply with the required rulemaking provisions of Idaho Code § 39-107D. Thus, according to Freeman, the Rules are illegal and void. Petition at 2.

In response, DEQ filed a motion to dismiss and alternatively, a motion for summary judgment,<sup>3</sup> arguing that Freeman had provided no factual or legal basis for exempting his vehicle from the requirements of IDAPA 58.01.01.517.5 and Idaho Code § 39-116B. DEQ also asserted that the agency fulfilled its duties and obligations under Idaho Code §§ 39-107D and 39-116B, and was therefore entitled to summary judgment on Freeman’s claims. Freeman then filed a motion to deny DEQ’s motions, asserting again that DEQ intentionally misled the legislature and

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<sup>2</sup> See also Docket No. 58.0101-0901, Notice of Rulemaking – Proposed Rule, published on July 14, 2009; Notice of Rulemaking – Adoption of Pending Rule, published on October 13, 2009.

<sup>3</sup> Respondent’s, Department of Environmental Quality, Motion to Dismiss or in the Alternative Motion for Summary Judgment, dated June 7, 2011.

the public by failing to provide the best available peer reviewed science and supporting studies about the need for a Vehicle I/M Program and also violated the rulemaking requirements set forth in Idaho Code § 39-107D when promulgating the Rules.<sup>4</sup> Accordingly, Freeman argued, the Rules are null and void and his vehicle is not required to be tested.<sup>5</sup>

On September 29, 2011, the hearing officer entered a Recommended Order finding in favor of DEQ on the motion to dismiss and motion for summary judgment. The Hearing Officer stated:

[T]he Presiding Officer determines as a matter of law that the Idaho State Legislature and the DEQ, in the drafting and passage of I.C. 39-116B has fully complied with I.C. 39-107D and all subsections thereof, that such statute was lawfully and appropriately passed and sufficiently states [it's] meaning, and that passage of IDAPA 58.01.01.517 – 526 is an appropriate exercise of the authority delegated to the DEQ.

....

The motion for Summary Judgment filed by the Respondent, DEQ, in this matter is supported by an affidavit, the affidavit [of] Rick Hardy, which complies with the requirements of I.R.C.P. 56(e). The documents filed by Petitioner in response to Respondent's motion for Summary Judgment fails to comply with the requirements of I.R.C.P. 56(e) due to the fact that such documents do not contain Affidavits based on personal knowledge, nor do such documents, when analyzed independently, set forth such facts as would be admissible in evidence, as required by I.R.C.P. 56(e).

... the Presiding Officer concludes that in this case the pleadings, and admissions on file, together with the affidavits show that there is [no] genuine issue as to any material fact and that the moving party (DEQ) is entitled to a judgment as a matter of law. Therefore, the motion for summary judgment by the Respondent, DEQ, is granted, and the Petition of Mr. W. Allen Freeman filed in this matter is hereby dismissed.

5. The exemptions from vehicle emission testing are set forth in IDAPA 58.01.01.517 and I.C. 39-116B(7), in its Petition, Petitioner has not identified or

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<sup>4</sup> IDAPA 58.01.23.416 states that the Board may review whether a rule has been promulgated according to proper procedure, if noncompliance with procedural requirements is raised within the two-year time limit set forth in Idaho Code § 67-5231.

<sup>5</sup> *Petitioner's Motion to Deny Respondent's, Department of Environmental Quality, Motion to Dismiss or in the Alternative, Motion for Summary Judgment* dated July 27, 2011.

articulated a recognized basis for exemption under either of these sources, from the requirement of vehicle emission testing; as a result the Petition of Mr. W. Allen Freeman filed in this matter fails to state a claim upon which relief can be granted and the Petition is therefore dismissed.

Although the Hearing Officer reached the issue of whether the Idaho Legislature and DEQ complied with Idaho Code § 39-107D when enacting Idaho Code § 39-116B, Freeman abandoned this argument in the proceedings before the Board. His briefing papers and oral argument clarified that he is not challenging the enactment of Idaho Code § 39-116B but instead, DEQ's conduct in promulgating the Rules prior to legislative approval.

The prime issue . . . is whether DEQ complied with the required rule making provisions of I.C. 39-107D paragraphs (1), (2), (2a), and (2b), in support of IDAPA 58.01.01 that was approved by the Legislature in 2010. **Clearly, IF these provisions of I.C. 39-107D were not complied with, this rule is illegal, null and void.** . . . Therefore, no specific exemption listed in IDAPA 58.01.01.517-526 is required to be stated by the petitioner.

....

[T]he **genuine issue** has nothing to do with the drafting and passage of I.C. 116B nor is passage of IDAPA 58.01.01.517-526 an appropriate exercise of the authority delegated to the DEQ.

Petitioner's *Exception to Recommended Order Granting Summary Judgment for Respondent, Idaho Department of Environmental Quality* ("Exception"), p. 1 & p. 5, (footnotes and citations omitted). Due to Freeman's concession, the Board need not address his initial arguments regarding the drafting and enactment of Idaho Code § 39-116B.<sup>6</sup>

In response, DEQ contends that Idaho Code § 39-107D has no applicability to the two scientific findings required by Idaho Code §39-116B prior to the initiation of rulemaking, i.e.,

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<sup>6</sup> The Board, notes that Idaho Code § 39-107D(2) does not apply to legislative affirmation of a proposed rule, but instead to DEQ's conduct before the Board. "The legislature directs that any rule **formulated and recommended by the department to the board**" be based upon the best peer-reviewed science available and reliable studies and data. Accordingly, the Board does not adopt this portion of the Recommended Order. This directive implies, however, that the Board will conduct a comprehensive review of staff recommendations to ensure that any rule governed by Idaho Code § 39-107D complies with statutory requirements at the time it is forwarded to the legislature.

whether motor vehicle emissions constitute one of the top two sources contributing to the elevated ozone design value. In the alternative, DEQ contends that the agency complied with the procedural and substantive requirements of Idaho Code § 39-107D when fulfilling its rulemaking duties and obligations under Idaho Code § 39-116B, and is therefore entitled to summary judgment.

#### IV. ISSUES ON REVIEW

1. Whether Freeman has stated a claim that his vehicle should be exempted from the Vehicle I/M Program under Idaho Code § 39-116B(4).
2. Whether DEQ complied with Idaho Code § 39-107D in promulgating the Rules.

#### V. ANALYSIS

##### A. Freeman Has Failed To State A Claim Under Idaho Code § 39-116B(4).

In reviewing an I.R.C.P. 12(b)(6) motion to dismiss for failure to state a claim upon which relief must be granted, the question is whether the non-movant has alleged sufficient facts in support of his claim, which if true, would entitle him to relief. Orrock v. Appleton, 147 Idaho 613, 618, 213 P.3d 398, 403 (2009).

Idaho Code § 39-116B(4) provides that prior to revocation of a vehicle registration due to a failure to comply with emission testing requirements, the owner of the vehicle must first be allowed notice and an opportunity for a hearing. Pursuant to this and other statutory and regulatory provisions, Freeman initiated this contested case arguing that his vehicle is exempt from vehicle emission testing requirements. DEQ is authorized to exempt motor vehicles from the testing requirements consistent with the criteria set forth in IDAPA 58.01.01.517.5 and Idaho

Code § 39-116B(7).<sup>7</sup> Freeman has not identified or articulated a recognized basis for an exemption pursuant to rule or statute. Thus, the hearing officer was correct in concluding that, under IDAPA 58.01.01.517.5 and Idaho Code § 39-116B(7), Freeman has failed to state a claim upon which relief can be granted.

**B. DEQ Complied With Idaho Code § 39-107D In Promulgating The Rules.**

Pursuant to IDAPA 58.01.23.213, the hearing officer issued a *Pre-Hearing Conference And Scheduling Order On Motions For: Summary Judgment /& To Dismiss* (“Order”), dated June 28, 2011, stating, in pertinent part:

Based upon the discussions of the parties and the designated presiding officer ..., the following is hereby ordered:

The parties shall follow and comply with I.R.C.P. 56, et. seq. regarding the Motion for Summary Judgment filed by the Respondent in the above-captioned matter, and the deadlines for filing documents related thereto; said Rule of Civil Procedure shall also apply in all other regards concerning the Motion for Summary Judgment.

Order at 1.

Summary judgment is proper “if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” I.R.C.P. 56(c). When considering a motion for summary judgment, the Board must liberally construe the facts in favor of the party opposing the motion, who is also to be given the benefit of all favorable inferences which might be reasonably drawn from the evidence. Intermountain Bus. Forms, Inc. v. Shepard Bus. Forms Co., 96 Idaho 538, 540, 531 P.2d 1183, 1185 (1975).

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<sup>7</sup> The following vehicles are exempted from the Vehicle I/M Program: a. Electric or hybrid motor vehicles; b. Motor vehicles with a model year less than five (5) years old; c. Motor vehicles with a model year older than 1981; d. Classic automobiles as defined by Section 49-406A, Idaho Code; e. Motor vehicles with a maximum vehicle gross weight of less than fifteen hundred (1500) pounds; f. Motor vehicles registered as motor homes as defined by Section 49-114, Idaho Code; g. Motorized farm equipment; and h. Registered motor vehicles engaged solely in the business of agriculture. IDAPA 58.01.01.517.5; Idaho Code § 39-116B(7).

For documents and exhibits to be admitted into evidence for purposes of ruling on a motion for summary judgment, the documents and exhibits must be attached to an affidavit or verified complaint. Puckett v. Oakfabco, Inc., 132 Idaho 816, 979 P.2d 1174 (1999); I.R.C.P. 56(e).

When a motion for summary judgment is made and supported, as provided in this rule, an adverse party may not rest upon the mere allegations or denials of that party's pleadings, but the party's response by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If a party does not so respond, summary judgment, if appropriate, shall be entered against the party.

I.R.C.P. 56(e).

DEQ's motion for summary judgment was supported by the affidavit of Rick Hardy, which set forth his extensive qualifications as an expert witness and the scientific basis for concluding that the statutory requirements for establishing a vehicle testing program in the Treasure Valley had been met. The Hardy affidavit complies with the requirements of I.R.C.P. 56(e), which requires supporting and opposing affidavits "to be made upon personal knowledge, [to] set forth such facts as would be admissible in evidence, and ... show affirmatively that the affiant is competent to testify to the matters stated therein."

As the hearing officer observed, the documents attached to Freeman's pleadings do not meet the requirements of Rule 56(e). Rule 56(e) requires items offered in opposition to a motion for summary judgment to be attached to an affidavit verifying the items' authenticity. Freeman did not file an affidavit authenticating the documents attached to his pleadings, nor did he file an affidavit establishing that he has the knowledge, skill, experience, training, or education to offer admissible expert testimony. Further, the documents submitted were not relevant to the science-based portion of the rulemaking.

We do not derogate the importance of Freeman's participation in the legislative and administrative proceedings concerning the need for a vehicle emissions testing program in the Treasure Valley. Interaction between the Board and the public is essential in all rulemaking proceedings so that a final rule is the result of a careful process that uses supporting facts and incorporates public comments. And, it is clear that Freeman has devoted a considerable amount of time to the study of whether vehicle emissions testing is an appropriate strategy for maintaining air quality. In this contested case, however, Freeman was required to comply with Rule 56(e). Freeman's submissions are not adequate under the requirements of Rule 56(e) to defeat DEQ's motion for summary judgment. A party opposing a motion for summary judgment cannot merely rest on the allegations made in the pleadings, but must contradict assertions made by the moving party via production of evidence by way of affidavit or deposition. Worthen v. State, 96 Idaho 175, 176, 525 P.2d 957, 958 (1974).

Even putting aside these procedural defects,<sup>8</sup> Freeman's legal argument that DEQ violated Idaho Code § 39-107D must fail. Subsection 107D(1) requires that DEQ provide formal notice to the public when promulgating a rule that is broader in scope, more stringent than federal law or regulations, or regulates an activity not regulated by the federal government. The rulemaking notices published in the Idaho Administrative Bulletin on January 7, 2009, July 14, 2009, and October 13, 2009 explicitly stated, in pertinent part:

This proposed rule does not regulate an activity not regulated by the federal government nor is it more stringent than federal regulations. The Clean Air Act requires, in marginal ozone nonattainment areas, a vehicle inspection and maintenance program. This proposed rule is broader in scope than the federal law as it applies to sources in an area not yet designated nonattainment.

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<sup>8</sup> I.R.C.P. 1(a) requires that the civil rules "be liberally construed to secure the just, speedy, and inexpensive determination of every action and proceeding." The policy behind rules of civil procedure is to provide every litigant with his or her day in court. Clark v. Olsen, 110 Idaho 323, 325, 715 P.2d 993, 995 (1986). This same policy is expressed in IDAPA 58.01.23. 011 which provides for the liberal construction of the Board's Rules of Procedure to secure a just, speedy, and economical determination of all issues presented to the agency.

This language makes clear that the Rules are broader in scope than federal law, consistent with the requirements of Idaho Code § 39-107D(1).

Additionally, Freeman's argument regarding the applicability of Idaho Code § 39-107D(2) is without merit. First, the only science-based portion of the Rules to which this subsection would apply pertains to which counties within the airshed would be excluded from the Program due to their minimal contribution to the elevated ozone design value. Freeman is not challenging the specific determination that certain counties should be excluded from the Program's requirements, nor has he submitted any competent evidence to dispute DEQ's findings.

Instead, Freeman challenges the Rules on the ground that DEQ did not provide the Legislature and the public the best science available regarding whether a vehicle emissions testing program is a necessary and effective air quality control strategy. However, the Idaho Legislature already decided this issue prior to the challenged rulemaking. In enacting Idaho Code § 39-116B, the legislature determined that vehicle emissions testing is an appropriate strategy for addressing elevated ozone values. Idaho Code § 39-116B does not require DEQ to revisit this issue, but instead to implement a Vehicle I/M Program when the statutory criteria established by the legislature are met. Accordingly, the Rules outline the minimum requirements of the Program, not whether the Program should be developed.

Finally, the process and timeframe for reviewing the Program is set forth in Idaho Code § 39-116B(5) and (6):

(5) The Department shall annually review the results of the vehicle inspection and maintenance program. The review shall include, among other things, an estimate of the emission reduction obtained from the number of vehicles that initially fail the test and then pass after maintenance.

(6) Every five (5) years beginning with the implementation of the

program, the Director shall review the air quality data and determine whether a program initially established pursuant to the provisions of this section should be continued, modified, or terminated.

These statutory provisions govern DEQ's scientific review of the Program, and when read together with subsection 116B(3), provide a comprehensive framework for the establishment and review of a vehicle emissions testing program in the Treasure Valley.

In sum, Freeman's legal arguments and supporting documents go to whether there is any scientific justification for a vehicle emissions testing program in Idaho. This question has been answered in the affirmative by the Idaho Legislature and was not at issue in the rulemaking proceedings. Thus, Freeman's challenge to the Rules under Idaho Code § 39-107D must fail.

## VI. CONCLUSIONS OF LAW

Based upon a review of the record and oral and written arguments of the Parties, the Board concludes that:

1. Freeman has failed to state a claim under Idaho Code § 39-116B(4).
2. DEQ complied with the substantive and procedural requirements of Idaho Code § 39-107D.

In consideration of the foregoing, it is hereby ordered that the relief sought in the Petition is DENIED, and DEQ's motion to dismiss and motion for summary judgment are GRANTED.

This is a final order of the Board. Pursuant to Idaho Code §§ 67-5270 and 67-5272, any party aggrieved by this final order or orders previously issued in this case may appeal this final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which (i) a hearing was held; (ii) the final agency action was taken; (iii) the party seeking review of the order resides, or operates its principal place of business in Idaho; or (iv) the real property or personal property that was the subject of the agency action is

located.

An appeal must be filed within twenty-eight (28) days of the service date of this final order. See Idaho Code § 67-5273 and IDAPA 58.01.23.791. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

DATED THIS 11<sup>th</sup> day of April 2012.

IDAHO BOARD OF ENVIRONMENTAL QUALITY

  
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Carolyn S. Mascareñas

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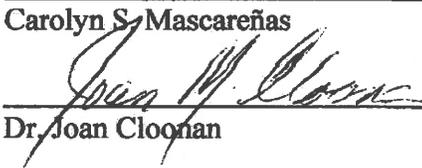
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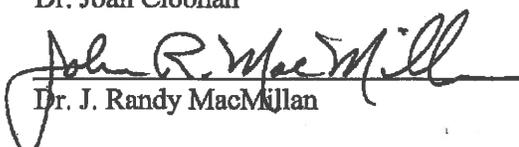
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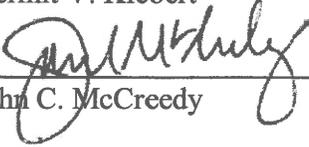
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DATED THIS 11<sup>th</sup> day of April 2012.

IDAHO BOARD OF ENVIRONMENTAL QUALITY

\_\_\_\_\_  
Nick Purdy

\_\_\_\_\_  
Carolyn S. Mascareñas

\_\_\_\_\_  
Dr. Joan Cloonan

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Dr. J. Randy MacMillan

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Kermit V. Kiebert

\_\_\_\_\_  
John C. McCreedy

  
\_\_\_\_\_  
Kevin C. Boling

