



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 25, 2002

The Board of Environmental Quality convened on April 25, 2002 at 9:00 a.m. at:

Westcoast Twin Falls Hotel
Juniper Room
1357 Blue Lakes Blvd., North
Twin Falls, Idaho

ROLL CALL

BOARD MEMBERS PRESENT:

Donald J. Chisholm, Chairman
Paul C. Agidius, Vice chairman
Marti Calabretta, Secretary
Dr. Joan Cloonan, Member
Marguerite McLaughlin, Member
Nick Purdy, Member
Dr. J. Randy MacMillan, Member

BOARD MEMBERS ABSENT:

None

DEPARTMENT OF ENVIRONMENTAL QUALITY STAFF PRESENT:

C. Stephen Allred, Director
Debra Cline, Management Assistant to the Board
Barry Burnell, Technical Services
Doug Conde, De puty 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
Steve Goddard, DAG, DEQ
Kate Kelly, Administrator, Air Quality Program
Larry Koenig, Administrator, State Planning and Special Projects
Pam Smolczynski, Environmental Program Planner
Doug Howard, Administrator, Twin Falls Region Office
Dave Mabe, Administrator, Water Quality Program

OTHERS PRESENT:

Rick Simmons, Monsanto
Representative Sharon Block, Idaho Legislature
Jack Lyman, Idaho Mining Assoc.
Phyllis Beard, Amalgamated Sugar Co.
Steve Price, Idaho Sanitary Services Assoc. (ISSA)
Don Simmons, ISSA
Robert Simmons, ISSA
Representative Charles Cuddy, Idaho Legislature
Senator Laird Noh, Idaho Legislature
Tom Turco, Central District Health
Mike Reno, Central District Health
Dan Kriz, South Central District Health
Cheryl Juntunen, South Central District Health
Larry Pennington, North Side Canal Co.
Jane Gorsuch, Intermountain Forest Assoc.
Beth Elroy, Monsanto
Dan Gogger, Idaho Rural Committee
Nick Tzanakakis, private citizen
Ginny Gunn, private citizen
Helen McCracken, private citizen
Lorraine, Times News
Pat Hansing, private individual
Katie Simmons, private citizen
Phuong Smith, private citizen
Craig Slane, private citizen
Ed Smith, private citizen
Peter Rickards, private citizen
Dick Rush, Idaho Assoc. of Commerce & Industry

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

Work Session

Kate Kelly, Administrator, DEQ Air Quality Program, provided a report on the status of air quality permitting. The Department is on track to meet its goals to clear up the permit backlog. She noted there is a potential for some permits to be appealed to the Board, but they hope to resolve the issues during the permitting process. Ms. Kelly also briefly discussed some upcoming rulemaking on open burning, Title V fees, a regulatory level for hydrogen sulfide, and the field burning issue in Northern Idaho. DEQ is currently working with the Department of Agriculture to develop and implement a program for smoke management. Significant resources are being used to act aggressively to resolve this problem.

Larry Koenig, Administrator, DEQ Planning and Special projects, reported on the DEQ long-range strategic plan. The Department would like to have the Boards' input on the plan. Dr. Joan Cloonan suggested the Board hold an informal, open meeting with a facilitator to develop

its recommendations on the plan. Chairman Chisholm asked each Board member to prepare five main issues or suggestions of goals to stimulate the discussion at the upcoming meeting. Director Steve Allred indicated the long-range strategic plan should set a path for where the Department should be 25 years from now. Marti Calabretta questioned what the expectation was of the Board for leadership. Members believed it was to interface between the Department, the laws, and the public and what they want. Nick Purdy asked Larry Koenig to prepare a summary of the comments received at the public meetings. The meeting will be scheduled for early June.

DEQ staff briefed the Board on the rule dockets. No motions were made or passed and no votes were taken during the work session.

The Board adjourned for lunch at 12:00 p.m.

The Board of Environmental Quality reconvenes on April 25, 2002 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
Marguerite McLaughlin, Member
Dr. J. Randy MacMillan, Member
Nick Purdy, Member

BOARD MEMBERS ABSENT:

None

Chairman Don Chisholm called the meeting to order and advised that Dick Rush, Idaho Association of Commerce and Industry, had requested to present testimony on Agenda Item No. 4, Solid Waste Management Rules, at this time due to travel arrangements.

Dick Rush stated IACI would not oppose the Solid Waste Rules, but felt they were not in final shape yet. He noted the Department had brought the rules before the Board three times asking for temporary rules, and IACI initially resisted their adoption. He applauded the Board for allowing the process to work through negotiations and resolve their concerns. Mr. Rush thanked the Department for their work on the rules. IACI still has some concern about whether the rules should be adopted as temporary rules.

Dick Rush read the written testimony of Jane Gorsuch, Intermountain Forest Association, into the record. Ms. Gorsuch was unable to attend the meeting. The written comments are attached (Attachment 1). The IFA has been involved in development of these rules for many years. As a result of the last Environmental Common Sense meeting, the majority of the forest products sector concerns have been resolved. It was agreed that all wood and mill yard debris facilities will be considered Tier I facilities unless the Department can prove that due to specific

site criteria, it should not be Tier I. At the suggestion of the health districts, the Department will develop a practical computer model to provide a quick way to determine whether a site proposed for use would create an environmental problem. The criteria used in the model will include site geology, site soils, groundwater characteristics, distance to surface water, and site climatic data. Log and mill yard debris managers will “ground truth” the model to assure that it works to identify potentially poor sites. The IFA believes this is a workable solution and looks forward to working with DEQ and the health districts on this project. Once the rule is in final form, the IFA will perform a legal and technical review and submit comments as necessary. One issue that still generates multiple comments and concern is the 2000 cubic yard total disposal capacity limitation on Tier I facilities. It is suggested that to completely clarify this matter, Section 009.05 be amended to note that log and mill yard debris facilities are Tier I regardless of total annual volume. The IFA will address this matter during the public comment period.

Dick Rush thanked the health districts for taking part in the negotiations and providing valuable input.

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.

Chairman Chisholm opened the floor for public comments. Mr. Nick Tzanakakis, private citizen from Hagerman, expressed concern that private citizens who wish to report environmental violations are fearful because their confidentiality is not protected. He urged the Department of Environmental Quality to protect citizens and their property by maintaining confidentiality when complaints or reports are filed. Director Steve Allred explained that the DEQ policy is to keep complaints confidential until they have investigated them and determined enforcement action is necessary. If enforcement action is taken, evidence is needed to proceed, and the complainant may need to testify. Mr. Tzanakakis stated numerous people in Gooding County have had problems because their names were provided to the violators they had reported. Director Allred pointed out that the confidentiality policy he discussed was used by all DEQ offices. He was not certain of the policies of other city or county offices.

Mr. Tzanakakis also discussed the health and environmental problems associated with dead animals being left on public roads and other areas. The city, county, and state agencies do not seem to provide adequate services to remove and dispose of the carcasses.

Helen McCracken, who lives two miles north of the Haflinger Desert Rose Dairy, testified regarding the odor, potential water pollution, and health problems in the area. About a year ago, a formal complaint was sent to the Inspector General of the Environmental Protection Agency. The letter was signed by 45 citizens. The EPA investigation confirmed that there were problems with odor, dust, and flies, but there was no proof of water pollution. EPA stated they would not take action until water pollution is proven to be a problem, but they will keep the file open. Area residents are in the process of trying to prove water pollution under the Clean Waters Act. The Sierra Club of the USA has attorneys investigating documentation. A lawsuit may be filed.

DEQ has done testing for hydrogen sulfide levels on Ms. McCracken’s property a number of times and found ratings up to and over 600, with levels of 1,500 right by the dairy. She was very distressed to overhear a DEQ employee state, “Odor is not a health hazard in Idaho as far as the dairies go.” DEQ has 52 pages, single spaced, of telephone calls from residents in the area

complaining about the problem. Don Chisholm indicated that Kate Kelly, Administrator of the Air Quality Program, provided the Board with a study from the state of Iowa on hydrogen sulfide standards. The Board has directed the Department to initiate rulemaking to address the health hazards of hydrogen sulfide and set a state standard. A rule should be before the Board by the November meeting if not sooner. Ms. McCracken stressed her concern with the averaging process used to assess health risks. Her husband's asthma was in remission until the two dairies, the Dutch Touch and the Desert Rose, went into production two miles south of their home. She felt that given the overwhelming documentation on the health hazards of hydrogen sulfide, the problem was not being dealt with realistically.

Director Allred thanked Ms. McCracken for her cooperation with the testing process. He stated that based on the information obtained near her home and all over the state, it is clear that it is time to make a decision on a state standard for hydrogen sulfide. The standard will first have to be adopted by the Board of Environmental Quality, and then by the Idaho Legislature. There will be many challenges before it can be accomplished. The Director cautioned that the standard will not solve the odor problems. The goal will be to protect public health and set expectations for dairies and all other sources. The odor from hydrogen sulfide can be detected at very low levels not normally associated with health risks.

Helen McCracken emphasized that odor was not the main problem. They are concerned about their lives and all of the health hazards, including flies spreading disease. Residents have contacted South Central Health District with their concerns, but were told that it is an Idaho State Department of Agriculture issue. ISDA was contacted about the flies, and they said it was a South Central Health District issue. Residents are very frustrated from being referred back and forth between agencies.

Ginny Gunn, resident of the Cedar Draw area, asked what the DEQ could do to protect the health of residents until the standard for hydrogen sulfide is set. They have been subjected to high levels of hydrogen sulfide for two years and suffer headaches, nausea, breathing problems, memory loss and many other problems. The ISDA has not been the helpful with the problem. The DEQ last year was extremely helpful in moving in the right direction, but then the matter was placed in the ISDA's hands. Director Allred stated he could not promise a short-term fix. He confirmed that the responsibility for enforcing the agricultural odor laws was removed from DEQ and placed within the Department of Agriculture. However, DEQ does have the continuing responsibility for establishing standards that have to be observed by the ISDA, the agricultural industries, cities, and all other industries and activities in the state. The process of setting a standard is a long and complicated process. It will most likely be subject to a great deal of public comment and controversy. An enforceable standard will probably not be in place before the end of the next session of the Legislature. DEQ will continue to document conditions. Those documented conditions could be used perhaps in a number of ways by those who are most impacted by the problem.

Director Allred again emphasized that the health-related number will not solve the odor problem. Recent reports including the Iowa study have confirmed what was already suspected, and provide sufficient additional data that can be used to establish a standard. The standard will probably be significantly higher than five parts per million. The odor caused by hydrogen sulfide can be detected at something less than five parts per million. Additionally, the odors are not just hydrogen sulfide. There are about 140 components in the odor. DEQ will also consider the effects of hydrogen sulfide combined with ammonia.

Ginny Gunn stressed that she was not so concerned about the smell as the neurological and breathing problems caused by the odors. Local residents have been complaining and reporting these problems for the last two years to no avail. Chairman Chisholm sympathized with the situation, and reiterated that the Board has no authority over dairy odor issues. He urged the residents to report their concerns to their legislators. Ms. Gunn indicated they had contacted their legislators and the ISDA. She stated their concerns were met with arrogance and indifference by the ISDA and feared it would take someone dying before their concerns were heard. Residents have been bounced from one department to another, with each saying it is another's responsibility.

Chairman Chisholm noted that the public comment period time was up and asked that anyone who still wished to address the Board send their written comments to the Board's secretary for distribution to the members.

Marguerite McLaughlin suggested the Board send a letter to the Department of Agriculture advising them of the concerns expressed by the citizens at the meeting and expressing the Board's concern about the odor problem and the potential health risks. Chairman Chisholm agreed and felt the letter should be co-signed by Director Allred and copied to the legislators. Paul Agidius suggested a transcript of the testimony be attached to the letter.

AGENDA ITEM NO. 1: ADOPTION OF MINUTES

Dr. Joan Cloonan noted a correction to the spelling of Lisa Kronberg on page one and three, and an addition of Larry Koenig to the list of attendees.

➤ **MOTION:** Dr. Randy MacMillan moved the minutes of the February 6 & 7, 2002 Board meeting be adopted as corrected.

SECOND: Paul Agidius

VOICE VOTE: Motion passed by unanimous vote

AGENDA ITEM NO. 2: DIRECTOR'S REPORT

a. Legislative Wrap-up

Director Steve Allred gave a brief report on legislative actions affecting the Board and DEQ. All of the rules adopted by the Board were approved by the legislature with little dispute including the emergency episode air pollution rule. A bill was also passed that directly affects DEQ regarding the stringency of rules. Director Allred opposed the bill because it requires the Department to make a determination as to whether or not a rule is more stringent than, or covers more than federal legislation. Such a determination is almost always a judgment decision. The Director felt this would open the door to litigation whenever someone wanted to challenge a rule.

Legislation was introduced to bring a non-judicial determination to whether or not TMDLs are plans or rules. DEQ deals with TMDLs as plans that are not enforceable on the face. The Department uses essentially the same procedure for public notice and input as rules, but they are not adopted by the Board as rules. However, in a lawsuit brought against the Coeur d'Alene TMDL, a state district court set aside the TMDL because it did not follow the Administrative Procedures Act for rulemaking. DEQ appealed the decision to the Supreme Court. It was hoped

this legislation would resolve the lawsuit. The legislation would have clarified a procedure in statute by which the TMDLs are adopted. DEQ withdrew the bill because they were not able to reach agreement with the parties who objected to it. The solution now rests with the Supreme Court. Meanwhile, a number of TMDLs need to be adopted. Since Idaho no longer has a TMDL on the Coeur d'Alene, there is a significant chance the federal government will adopt one.

Legislation was also passed to settle an objection by the state of Washington on how they will be represented on the Coeur d'Alene Basin Commission. Prior to the legislation, the law required the representative from Washington to be a Spokane County commissioner. The new legislation removes that requirement and will allow the governor of Washington to appoint his choice as the representative.

The Coeur d'Alene Commission has been activated and Director Allred has been appointed as a state representative. The Tribe has signed an agreement with the Governor to participate, but a representative has not been officially appointed. The state of Washington and the federal government have indicated they will participate and an agreement is being prepared. The federal government has not decided how they will be represented. The legislation requires the President to approve the appointee for the federal government. It is thought that EPA may be selected as the representative. The federal government will participate as an observer until the matter is settled. The first meeting of the Commission will take place in early May 2002 to deal with business matters to establish the organization. DEQ will provide initial staff support to the Commission until they decide how they want to proceed with staffing and other matters. The Commission's first program will be to adopt an interim plan to proceed. Congress appropriated two million dollars in funding for the Commission. The legislature appropriated one million dollars to DEQ to assign for the Commission this fiscal year.

Director Allred expects the Record of Decision for the Coeur d'Alene Basin clean up to be issued in June 2002. Informal and written communications with the EPA indicate they will be able to meet the comments of the State of Idaho, and that the State will agree with the Record of Decision.

DEQ has signed an agreement with the Department of Energy on the clean up of the Pit 9 area at the INEEL. The agreement has substantial advantages for the State of Idaho and resolves many of the issues of the last several years. Following signing of the agreement, DEQ filed suit in federal court asking the court to interpret the 1995 agreement that requires all transuranics to be removed from Idaho. The DOE interprets the agreement to mean that they have to remove only aboveground transuranics. DEQ is confident the court will find that the agreement requires the removal of all transuranics from Idaho.

DEQ has issued a Notice of Violation and \$70,000 fine to the Idaho Department of Transportation and its contractor for violations of the Water Quality Act. A consent order is being negotiated that will require the DOT to comply with the Water Quality Act and repair some of the damage. The fine may be handled through a Supplemental Environmental Project.

Director Allred discussed the impact of the recent \$686,000 budget holdback of general funds for DEQ. The holdback for DEQ for fiscal year 2003 will total \$1,322,000. DEQ will maintain its core responsibilities, but many projects that are not required to be completed in a certain timeframe will be delayed. An example of the projects would be non-TMDL related

water quality monitoring. During the period of time DEQ is operating on a reduced budget, it will not proceed with some of the groundwater investigations and studies it had planned. Projects regarding Coeur d'Alene Lake, Priest Lake, and Payette Lake will be reduced or delayed. The Coeur d'Alene Lake Management Plan will be completed. Monitoring with the USGS and some ambient water quality monitoring will also be reduced. Non-critical drinking water activities and endangered species activities regarding Bull Trout will be reduced. DEQ also plans to defer about six remedial programs it had anticipated conducting.

Jack Lyman, Idaho Mining Association, explained the IMA's concerns in co-sponsoring the legislation to require DEQ to declare when a rule is more stringent or broader in scope than corresponding federal rules. There is already a statutory prohibition against adoption of rules that are more stringent or broader in scope than federal rules, but IMA feels there seems to be some doubt about whether some rulemaking comes under that prohibition. They felt a way to advance the cause was to require that DEQ disclose to the public when it proposes rulemaking to the Board, and when the Board proposes a rule to the legislature, an evaluation that has been done by DEQ as to whether or not the proposed rule is more stringent, broader in scope, or proposes to regulate an activity that isn't being regulated by the federal government.

Mr. Lyman stated he understood Director Allred's concern that this will often be a judgment call and may in fact open some of the rules up to litigation. He was unaware of any litigation arising from the strict statutory prohibition. It is the gray areas that are in question. The legislation was not meant as a punitive measure, a means to complicate the system, or to provide other litigious ways to overturn rules. IACI and IMA educated the legislators that the statutory prohibition applied only to specific areas of the code. The bill passed the legislature unanimously. Mr. Lyman believes this sends a very clear message to the Board that the legislature is going to look to the Board to avoid those areas that it can that are more stringent or broader in scope than the federal government. In the areas where the Board chooses to be more stringent, broader in scope, or to regulate something the federal government does not, there should be good justification, because he fully expects the legislature to question such rules and DEQ will have to make a good case to get them past the legislature.

Director Allred advised the Board that intent language was added to DEQ's appropriation legislation by Senator Hawkins to encourage DEQ to be more cooperative with local government. In response to that language both the Association of Counties and the Idaho Association of Cities sent letters to all legislators on the Joint Finance and Appropriations Committee stating that the cooperation between their organizations and DEQ was the best it had ever been.

AGENDA ITEM NO. 3: INDIVIDUAL/SUBSURFACE SEWAGE DISPOSAL RULES, DOCKET NO. 58-0103-0201 (TEMPORARY RULE)

David Mabe, Administrator, Idaho Water Quality Program, discussed how the new stringency law might be applied regarding the Subsurface Sewage Disposal Rules. The rules are probably broader in scope than federal rules because there are no specific federal rules applying to these types of facilities, but there are other wastewater rules. This is one area that is in question and DEQ will investigate further exactly how the stringency issue should be addressed.

The Board had three areas of concern with the rules. DEQ will address the concerns and bring the rule back to the Board at its June meeting for consideration as a proposed rule. The

rule will not go forward as a temporary rule. Mr. Mabe discussed the three areas of concern and possible solutions. The areas are:

- 1) **Notification of failing systems.** New language to be added, “the owner of any failing system shall obtain a permit as soon as practical after the owner becomes aware of the system failure. In no case shall the timeframe for obtaining a permit exceed seven working days. Construction shall be completed within 30 calendar days of permit issuance unless otherwise specified by the Director.”

- 2) **How will the rules affect existing permits that have been issued, but no construction has taken place?** Clarifying language would read, “Individual subsurface sewage disposal installation permits or other lot-specific approvals for systems issued prior to (insert effective date of rules) pursuant to Idaho Code, Title 39, Chapter 1 or Title 39, Chapter 6 shall be valid until expiration. This language would allow a permit issued prior to the rule becoming effective to be valid for the life of the permit (a one-year period plus opportunity for extensions if needed). Nick Purdy asked how the proposed change would affect previously platted subdivisions, some as far back as the 1917, that were previously guaranteed permits by a grandfather policy. David Mabe explained that the language, “or other lot-specific approvals” was left in the rule to cover such situations. If there is a specific set of conditions that were approved with the plat, they would still be viewed as valid and would go on basically indefinitely. Mr. Purdy stated many of the older plats do not have conditions and were approved by the county before the DEQ or the health department existed. Mr. Mabe stated that if there were not lot-specific approvals for the septic, they would fall under the new rule. The plat would still be valid, but the lots would have to meet the new septic system requirements to be permitted. Barry Burnell, DEQ Technical Services, agreed there is a great deal of land within the state that was platted before there were any rules. When owners of property platted prior to 1971 apply for an on-site system, current rules are applied. Permits are not issued based on rules that were not available in 1917. There is a lot of platted ground with lots that cannot be built on because they do not meet separation distances, set backs, or other conditions required today. DEQ attempts to work with these situations by finding innovative ways to resolve the problem such as finding a septic lot, easement, combining lots, and using community septic systems. Nick Purdy asked if DEQ planned to continue the policy of being flexible and innovative with the new rules. Mr. Burnell confirmed that they would.

- 3) **How will failing systems be handled?** On page 19 in the Failing Subsurface Sewage section, clarifying language will be added to allow a system that has failed and cannot meet the new rule to use a replacement system design that is approved by the Director. Individuals will not be held to the new standards if they simply cannot meet them. Flexibility will be used to get a new system in place. Don Chisholm noted that the language does not guarantee that a design will be approved by the Director. There may still be situations in which the Director cannot in good judgment approve a system. Mr. Mabe stated that would be a very difficult decision to make and DEQ intends to do the best it can to get a working system in place in these situations.

Gary Allen, attorney with the law firm of Givens Pursley in Boise, testified in support of the Subsurface Sewage Disposal Rules on behalf of his client, Valley Advocates for Responsible

Development. They support the rules as presented and have no concerns with the proposed changes discussed earlier in the meeting. Valley Advocates for Responsible Development was one of the parties to the lawsuit that led to this rulemaking. He encouraged the Board and DEQ to move forward with the rules quickly and stated his confidence that DEQ would reasonably implement existing rules until the new rules are in place.

Steve Goddard, Deputy Attorney General for DEQ, noted that all the parties to the lawsuit participated in the negotiated rulemaking for this rule.

AGENDA ITEM NO. 4: SOLID WASTE MANAGEMENT RULES, DOCKET NOS. 58-0106-0201 AND 0202 (TEMPORARY RULE)

Dean Ehlert, State Waste and Remediation Program coordinator, reviewed recent changes (Attachment 2) made to the rules. Changes were made regarding the closure of existing facilities, language regarding compliance with other state and federal laws, changes to definitions to add more certainty to how the rules will be applied, and wood and mill yard debris facilities. Mr. Ehlert discussed some of the issues regarding wood and mill yard debris facilities. He pointed out that by adopting these rules, no new rules are being imposed on wood and mill yard debris facilities. They are already regulated under the existing solid waste rules. DEQ is requesting the rules be adopted as temporary rules so they will become effective immediately. They will apply to new facilities coming on line and start the timeframe for existing facilities. Mr. Ehlert asked that the Board adopt the rules with the changes proposed earlier in the meeting and a change on Page 9, section 009.c. to correct the reference number to Section 001.03.a.ix. The reference also needs to be corrected on Page 10.

Marguerite McLaughlin asked for clarification that the 2000 cubic yard criteria would not be the only criteria used to determine at which tier a wood and mill yard debris facility would be regulated. Dean Ehlert confirmed that in addition to the volume, DEQ would look at the whole site including climatic conditions, soil, and distance to groundwater.

Chairman Chisholm asked Mr. Ehlert to discuss and respond to the comments received from Representative John Campbell. Mr. Ehlert read and responded to each of the comments:

- 1) All log yard debris will now be considered as solid waste unless it is handled as per the Technical Guidance Manual. **Response:** Wood and mill yard debris is already regulated under the current Solid Waste Rule unless it is managed according to the Technical Guidance Manual. If a facility is using the TGM, it will be exempt from the proposed rules.
- 2) Neither the proposed rules nor the TGM allow for materials to be handled in accordance with typical current practices such as stockpiles and non-regulated landfills. **Response:** It will depend on what the materials are being stockpiled for. Under the TGM some of the uses are for beauty bark, firewood, soil amendment, etc. If they are stockpiling for those reasons, to get enough volume to pick up, those materials would be regulated under the TGM. There should not be any non-regulated landfills. They should be operated under the current rule or the TGM.
- 3) The Tier One categorization of log yard debris is appropriate; however, the proposed rules limit the amount of material to 2,000 cubic yards in a landfill and 600 cubic yards or cumulative for a processing facility. No where does it state that wood processing facilities are exempt from these limits. **Response:** As stated earlier, under the proposed rules in section 009., the Tier One classification would apply to all non-wood waste

management facilities. Section 009.05 applies specifically to wood and mill yard debris facilities and that section has no reference to the volume levels mentioned. The volume will not be the sole reason for classifying a facility as Tier one, two, or three.

- 4) A typical sawmill will generate approximately 30,000 – 40,000 cubic yards of log yard material per year. On-site piles can range from 10,000 – 20,000 cubic yards in size. **Response:** The proposed rule will not apply the cubic yard limit.
- 5) It is appropriate to include boiler ash in the wood waste handling because it is often combined. **Response:** Under the TGM, facilities are allowed to landfill wood waste including up to 6% boiler ash and it will still be considered wood and mill yard debris. Higher percentages would be considered as more of a typical industrial landfill.
- 6) On page 9 the proposed rules refer to site-specific criteria and granting the department flexibility to regulate the site under a different tier classification. Many mills are located on or near rivers and they have shallow groundwater. It would be possible under the current wording for the department to request any of the data specified and reclassify the site. **Response:** That is true, and DEQ would do that if there was a concern that a facility was impacting groundwater. DEQ looks at potential uses as required under the Ground Water rule to see if a facility is impacting groundwater. Regarding the distance to rivers and streams, federal requirements also set floodplain restrictions for any type of facility and would apply to any type of solid waste landfill.
- 7) It would be more appropriate to limit the length of time a pile exists, than the size of the pile for the following reasons: if the environmental concern is leaching and it takes time for the wood to degrade before it begins to leach; piles can vary in size and a 10,000 cubic yard wood waste pile does not have the same odor, vector, etc. concerns that a 10,000 cubic yard household waste pile would have. **Response:** DEQ agrees with these comments and will consider these conditions when evaluating a site to determine whether a Tier one classification is appropriate.
- 8) Through conversing with one of the mills regarding their attempt to follow the wood waste TGM, it had become apparent that the Panhandle Health District was not capable of making a decision in this area of expertise. Since the wood waste is now classified as a solid waste, IDEQ should have jurisdiction. **Response:** The staff at the Panhandle Health District who deals with this has considerable experience with this type of material. DEQ is involved with the decisions and the health districts often consult with DEQ on whether a facility is protective of environmental health and public health. Again, wood waste is currently classified as a solid waste, so the proposed rule will not change that.
- 9) It would be a good idea for someone to identify what the cost to industry would be once these rules are enacted. There will be hauling, recycling, environmental testing, environmental consultants, and in-house expenses to meet these new rules. It may be enough to push some of the mills into closure. **Response:** As currently proposed, the requirements under Tier one are less restrictive than the current rules. For facilities that are managing their waste according to the current Solid Waste Rules, the costs should remain equal or decrease.

Other suggested changes included: Page 4, “statistically significant” needs to be more clearly defined, and linear regression in correlation requires large data sets which are not typically available in this situation. Mr. Ehlert suggested the Technical Guidance Committee address these issues. On Page 9 under 02.a. and b., - for clarification purposes the term “log yard debris” should be added to the list of definitions. Mr. Ehlert noted there is a separate section that specifically discusses the classification of a wood and mill yard debris facility. On Page 9, 05. –

suggested a change from one year to three years after the effective date to allow IDEQ time to prepare the ash spreadsheet and for industry to work on the TGM. Mr. Ehlert noted that the one-year timeframe was developed and agreed upon during the negotiated rulemaking. The parties felt the one-year time period was adequate time for the Technical Guidance Committee to meet and develop recommended changes to the manual. On Page 13, under 011.01.g. – the term “sufficient storm water management provisions must be implemented” should be clarified in scope. Mr. Ehlert explained that the term sufficient will depend on site conditions—what is sufficient for one facility may not necessarily be sufficient for another, or what is sufficient for one could be too much for another. It is a site-by-site determination.

The comments also included suggestions for the TGM including: 1) A new team composed of individuals operating in Idaho and impacted directly by the new rules should look at updating the TGM. Mr. Ehlert advised that new members have been nominated for the Technical Guidance Committee and the first meeting should be held within the next month. 2) The TGM should add the option of storage piles with storm water runoff containment. Again, the limitation should be on time stored, not the size of the pile. Mr. Ehlert felt the Technical Guidance Committee could consider this suggestion.

Representative Charles Cuddy presented letters from the Clearwater County Commissioners, the Three Rivers Timber Company, and the Konkolville Lumber Company to be included in the record (Attachment 3). Representative Cuddy testified on behalf five sawmills that operate in the Clearwater area. The timber business in this area is very depressed and under great economic and environmental pressure. He thanked Director Allred, Orville Green, the Environmental Common Sense Committee, Dean Ehlert, and all DEQ staff who helped develop the Solid Waste Management rules and reach an agreement that the environment and industry can live with. He stressed that the timber industry remains to be a concerned with the 2,000 cubic yard criteria. This volume automatically puts most log yard debris facilities in the higher Tier II classification. Most log yard waste is dirt, rock, and very little wood fiber due to the management systems used to screen out wood fiber for use as hog fuel, firewood, etc. There is very little cedar in the log yard debris facilities in the area because the timber is either sold with the bark on or the waste is sold as hog fuel and hauled off. Representative Cuddy acknowledged that the 2,000 yard criteria had been addressed, but reminded that the laymen reviewing the rules may not fully understand and further discussions may be necessary.

Chairman Chisholm asked if the TGM made consideration for facilities that contained mostly dirt and rock, and had no bark with the kind of tannins that create groundwater problems. Dean Ehlert explained that in the rules under the definition of inert, a section was added for inert wood and mill yard debris. DEQ plans to develop a guidance so a facility can determine whether their waste meets the inert description. Inert waste is exempt from the proposed rules.

Steve Price, Idaho Sanitary Services Association, served as general counsel for a solid waste company in Idaho for the last four years and was involved in the negotiated rulemaking for the Solid Waste Management Rules. The proposed rules in their current form are acceptable to the ISSA. He suggested a technical revision to the proposed rules on Page 1, section 03.b.5. to clarify that the rules do not apply to any facility that operates under the TGM. The definition on Page 8, 51 implies that a wood or mill yard debris facility has to be in conformity with the requirements of the Wood and Mill Yard Technical Guidance Manual. The language on Page 10 appears to say that even if a facility is following the TGM, they are still subject to the Solid Waste Management Rules. He pointed out that Page 6, item 33 also contained confusing

language in the definition of “projected waste volume.” The phrase “total actual” conflicts with the word projected. He suggested the definition be changed to “waste volume.” He also supported some additional changes to the language regarding the 2,000 cubic yard criteria, such as “2,000 cubic yards at any one time.” Mr. Price supported the rules in their current form and felt the suggested changes could be addressed during the public comment period and should not prevent the temporary rule from going forward. As a general counsel in the industry, he appreciated the guidance provided in the proposed rules and felt they made sense.

Mr. Price felt the Environmental Common Sense Committee was very valuable in bringing about consensus in the rulemaking. He gave special thanks to Orville Green for going out of his way to work with the stakeholders and insure the best possible product for everyone. He also recognized Keith Donahue and Dean Ehler for their outstanding work in keeping everyone informed and being responsive to their concerns.

Dr. Joan Cloonan stated she was comfortable with adopting the rules as temporary rules, but questioned whether there was any interest in having a different effective date and if it was appropriate. Doug Conde explained the Governor’s office approved the rules as temporary rules due to the need to protect the public health. Chairman Chisholm felt it would be best go forward with the immediate effective date.

Dr. Cloonan expressed her appreciation for the efforts of the DEQ staff and the Environmental Common Sense Committee and also acknowledged the efforts of Barry Burnell who also spent many years working on Solid Waste Management rules.

➤ **MOTION:** Dr. Joan Cloonan moved the Board adopt the Temporary Rules presented under Docket No. 58-0106-0201 as amended orally and in the document presented by Dean Ehler in today’s meeting with an effective date of April 26, 2002.

SECOND: Dr. Randy MacMillan

VOTE: Motion passed by unanimous vote

➤ **MOTION:** Dr. Joan Cloonan moved the Board repeal the Solid Waste Management Rules and Standards as a temporary action presented under Docket No. 58-0106-0202 with an effective date of April 26, 2002.

SECOND: Dr. Randy MacMillan

VOTE: Motion passed by unanimous vote

AGENDA ITEM NO. 5

CONTESTED CASE AND DOCKET STATUS REPORTS

Paula Gradwohl discussed the status of contested cases before DEQ and the Board. Most of the cases are still in negotiations; several cases are near the six-month dismissal timeframe. Doug Conde advised the Idaho Rivers United, American Rivers United appeal on the C J Strike 401 Certification for relicensing will probably be decided in the next several months. The case may come before the Board.

Paula Gradwohl reviewed the status of rulemaking activities at DEQ.

AGENDA ITEM NO. 6

LOCAL REPORTS AND ITEMS BOARD MEMBERS MAY WISH TO PRESENT

Dr. Joan Cloonan reported she is participating in the Treasure Valley Airshed public process. The process involves a great deal of public input and community planning on goals. It is a very long complicated process, but is very worthwhile

AGENDA ITEM NO. 7

BOARD DEVELOPMENT ISSUES

Chairman Don Chisholm discussed the reappointment of Board members. Two members' (Marguerite McLaughlin and Don Chisholm) terms will expire on July 1, 2002; both expressed willingness to continue to serve and will seek reappointment. In addition, two Board members (Dr. Joan Cloonan and Marti Calabretta) are running for the Idaho Senate. If elected, they will resign their positions on the Board.

Doug Conde asked that future Board work sessions be recorded to preserve information for the rulemaking process. Nick Purdy felt it would be more efficient to incorporate the work session into the formal meeting. Marti Calabretta preferred the informal working environment of the work sessions and felt they allowed a free, open environment for discussion and review. The Board will consider the matter.

The meeting adjourned at 3:00 p.m.

Donald J. Chisholm, Chairman

Marti Calabretta, Secretary

Debra L. Cline, Management Assistant and Recorder

Attachments

Page

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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.