



State of Idaho  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
BOARD OF ENVIRONMENTAL QUALITY

1410 North Hilton, Boise, ID 83706-1255, (208) 373-0502

C. L. "Butch" Otter, Governor  
Toni Hardesty, Director

**MEMBERS OF THE BOARD**

Dr. Joan Cloonan  
Chairman  
9038 W. Beachside Lane  
Boise, ID 83714

Marti Calabretta  
Vice-chairman  
P.O. Box 784  
Osburn, ID 83849

Craig D. Harlen  
Secretary  
684 W. Harborview Dr.  
Coeur d'Alene, ID 83814

Donald J. Chisholm  
P.O. Box 1118  
Burley, ID 83318

Kermit V. Kiebert  
P.O. Box 970  
Ponderay, ID 83852

Dr. John R. MacMillan  
P.O. Box 712  
Buhl, ID 83316

L. Nicholas "Nick" Purdy  
Box 686  
Highway 20  
Picabo, ID 83348

**LEGAL COUNSEL**

Douglas M. Conde  
Harriet A. Hensley

**MANAGEMENT  
ASSISTANT**

Debra L. Cline  
(208) 373-0465

**IDAHO BOARD OF ENVIRONMENTAL QUALITY**

**MINUTES**

**March 12, 2008**

The Board of Environmental Quality convened on March 12, 2008, at 9 a.m. at:

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

**ROLL CALL**

**BOARD MEMBERS PRESENT**

Dr. Joan Cloonan, Chairman  
Marti Calabretta, Vice-chairman  
Craig Harlen, Secretary  
Donald J. Chisholm, Member  
Kermit V. Kiebert, Member  
Dr. John R. "Randy" MacMillan, Member  
Nick Purdy, Member

**BOARD MEMBERS ABSENT**

None.

**DEPARTMENT OF ENVIRONMENTAL QUALITY STAFF PRESENT**

Toni Hardesty, Director  
Curt Fransen, Deputy Director  
Martin Bauer, Administrator, Air Quality Division  
Barry Burnell, Administrator, Water Quality Division  
Debra Cline, Management Assistant to the Board  
Douglas Conde, Deputy Attorney General  
Orville Green, Administrator, Waste Management & Remediation Division  
Lisa Kronberg, Deputy Attorney General  
Mike McGown, Smoke Management Coordinator  
Paula Wilson, Rules Coordinator

**OTHERS PRESENT:**

Jack Lyman, Idaho Mining Association (IMA)  
Robbin Finch, Boise City  
Patti Gora, Safe Air for Everyone (SAFE)  
Kent Lauer, Idaho Farm Bureau

- ❖ 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.

### **PUBLIC COMMENT PERIOD**

Jack Lyman, Idaho Mining Association, discussed Senate Bill 1375, which was drafted and submitted by the IMA to provide a statutory solution to the problem it sought to resolve in the Ground Water Quality Rule last November. The purpose of the bill was to clarify portions of the Ground Water Quality Rule regarding mining. The Chairman of the Senate Health & Welfare Committee, Patti Anne Lodge, met with Mr. Lyman and DEQ Director Toni Hardesty to discuss her concerns about the bill. Senator Lodge asked the IMA to consider holding the bill and continuing with the negotiations. As a result of the discussions with Senator Lodge and other legislators, the IMA asked that Senate Bill 1375 be held while the parties go back into negotiated rulemaking. Four negotiating sessions are scheduled. Mr. Lyman is optimistic and said the IMA will proceed with the negotiations in good faith. It will, however, reserve its right to seek a legislative solution to clarify legislative intent if necessary.

### **AGENDA ITEM NO. 1:           ADOPTION OF BOARD MINUTES**

- a. October 10, 2007 meeting minutes

➤ **MOTION:** Marti Calabretta moved the Board approve the October 10, 2007 minutes.

**SECOND:** Craig Harlen

**VOICE VOTE:** Motion carried unanimously.

- b. Action Items

- 1) Update on the mercury issue and fish tissue sampling and monitoring results throughout spring and summer.

This item was rescheduled to the end of the meeting.

### **AGENDA ITEM NO. 2:           DIRECTOR'S REPORT**

Director Hardesty updated the Board on legislative and budget issues and briefly discussed the legislation and joint agreement to create a crop residue burning program in Idaho.

Barry Burnell, Administrator, DEQ Water Quality Division, responded to Board questions regarding testing for pharmaceuticals in ground and surface water in Idaho. He said the Idaho Department of Water Resources (IDWR) has a statewide ground water monitoring network that checks about 400 – 500 wells throughout Idaho. A portion of the wells are monitored by the U.S. Geological Service (USGS) through a contract with IDWR. Some of the wells are tested for personal care products, hormones, and pharmaceuticals. Ken Neely, IDWR, oversees the monitoring network.

Mr. Burnell explained DEQ has a contract with the USGS to do ambient monitoring of surface water in seven or eight large rivers throughout the state. He is uncertain whether the monitoring included testing for pharmaceuticals. Mr. Burnell offered to obtain information on the results of the statewide ground water monitoring network and the surface water ambient monitoring if the Board were interested.

Dr. Randy MacMillan said he was interested in hearing the information and asked Mr. Burnell to report back to the Board.

Chairman Cloonan said the city of Boise is very concerned about pharmaceuticals in the water and asked Robbin Finch, Water Quality Manager for Boise City Public Works, to share information on the matter. Mr. Finch said the city has been tracking pharmaceuticals in the water for almost 15 years. Data is available from testing conducted by USGS at three sites on the Boise River. Mr. Finch said findings indicate that personal care products and pharmaceuticals are ubiquitous in surface waters in the United States as a result of human use of a number of different chemicals, in particular, pharmaceuticals. A number of assessments of human health data have been conducted including recent research by the American Waterworks Research Foundation. The findings indicate the effects appear to be primarily on aquatic organisms, fish, and amphibians; no human health effects have been documented at the levels detected so far. The levels are well below existing MCLs and established conservative daily intake levels. Mr. Finch added this is a huge issue nationally and USGS, EPA and others are looking into it. A substantial amount of research is being conducted by multiple organizations.

Director Hardesty commented that DEQ's Pollution Prevention group is working on a pharmaceutical take-back program and studying what other states are doing to develop a program to safely dispose of unused drugs.

Director Hardesty reported that the federal Clean Air Mercury Rule (CAMR) cap and trade program was vacated by the U.S. Court of Appeals. No rule is in place now and EPA will need to evaluate how it will deal with mercury. Chairman Cloonan asked if DEQ was moving forward with an evaluation of the total environmental effects of mercury in Idaho. Director Hardesty said DEQ is proceeding with its evaluation and will closely monitor actions at the federal level to ensure no conflicts. In the meantime, the ban against the construction of coal-fired power plants in Idaho remains in place.

Marti Calabretta asked for clarification of Idaho's role in the permitting process of the mining project in the Cabinet Mountains in Montana and what Idaho's long-term use would be for the baseline monitoring information it is collecting for the Clark Fork River. Director Hardesty explained DEQ has conducted multiple years of monitoring with the objective of developing a baseline of monitoring data for those water bodies prior to the mine start-up. The data could be used for comparison if water quality begins to change. Idaho has been involved as an interested party in the permitting process and has been following the process closely.

Doug Conde, DEQ Deputy Attorney General, added that DEQ provided comments through the National Environmental Policy Act (NEPA) process and reviewed and provided comments on the draft environmental impact statement. He explained that because special resource waters in the state of Idaho are involved, there can be no increase at the state line of certain pollutants of concern.

Orville Green, Administrator, DEQ Waste and Remediation Division, responded to Board member questions regarding a recent press release about the Conda Mine site. He explained there have been selenium issues in the area and a large areawide study was conducted. The study showed no regional issue with selenium; however, there are local “hot spots” where waste rock piles and other contamination exist. Consent orders have been developed to address the site-specific problems at the remaining hot spots.

Ms. Calabretta asked what human health or environmental risks triggered the investigations and consent orders to address the hot spots. Mr. Green explained the hot spots were the result of past practices. The investigations were triggered by the death of some horses and other livestock in those areas. Selenium continues to be a concern, and in certain areas with selenium getting into the water, the potential for contamination still exists.

**AGENDA ITEM NO. 3:                    RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO,  
DOCKET NO. 58-0101-0801 (TEMPORARY RULE), (CROP RESIDUE  
DISPOSAL PROGRAM)**

Martin Bauer, Administrator, DEQ Air Quality Division, recognized the efforts and cooperation of the parties involved in the development and negotiation of this rule including Safe Air For Everyone (SAFE), the growers, the Idaho State Department of Agriculture, and DEQ. Although a lot of work has been done, much remains to be done. A State Implementation Plan (SIP) must be prepared and approved by EPA before crop burning can be conducted this fall. The effort is on schedule at this time.

Mike McGown, DEQ Smoke Management Coordinator, provided a brief history and overview of the litigation, negotiations, and development of the agreement and legislation (House Bill 557) that have allowed the Crop Residue Disposal Program and this rule to move forward. He outlined the major changes from the previous program:

- The program will be administered by the DEQ instead of ISDA.
- The program will be consistent statewide; there will be no different program for northern Idaho.
- The program is modeled after the Nez Perce program, which has been approved by EPA.
- The program is designed to be very transparent to the public and all involved.
- More smoke monitors will be added statewide.
- An advisory committee and annual review process will allow the program to be dynamic and continually improving.
- A 20,000 acre “soft cap” will be placed on grass burning. Currently about 15,000 – 18,000 acres of grass are grown statewide and that number is not expected to increase. A 10% buffer was added to set the cap at 20,000 acres. It is considered a soft cap because burning could exceed 20,000 acres, but that would trigger an air quality analysis by DEQ to make sure the program would still be compliant with the Clean Air Act.
- The program will set a standard to protect the air at 75% of the national standard. For example, the national standard for PM2.5 is 35 micrograms per cubic meter and the Idaho program will be 26 micrograms per cubic meter. The reason for the lower standard is that people experience health impacts at levels lower than the national standard, but levels can increase rapidly when burning fields, and the lower standard will provide a buffer.

- Growers will be charged a \$2 per acre fee for burning.

Mr. McGown said the proposed rule will implement House Bill 557 and incorporate the key items of the agreement. The negotiation process initiated by the Governor, development of the statute, the negotiated rulemaking process, and upcoming development of the SIP and operating guide were all designed to provide extensive public comment and stakeholder involvement.

Mr. McGown said some contentious issues arose during the negotiations, but very good agreement was reached as the rulemaking process moved forward. One issue of concern is protection of sensitive populations, in particular schools, hospitals, and retirement homes. The program is set up to require any burn decision to carefully consider the proximity and direction of any burn to these types of populations to avoid health impacts and to require monitoring or field presence in the area to mitigate the situation if a problem develops.

In conclusion, Mr. McGown said this rule is not more stringent than the federal rules. A lot of work remains to be done in a very short time to achieve the goal of allowing growers to burn this fall. DEQ has put together eight work teams in the Air Quality Division to work on the different aspects of moving the program forward.

Mr. McGown responded to numerous questions from Board members regarding how the program will be operated and how compliance will be measured and achieved.

Chairman Cloonan opened the floor to public testimony. Patty Gora, Executive Director, SAFE, testified in support of the proposed rule. She acknowledged the hard work of all the parties in developing the rule. She believes the agreement represents the best spirit of compromise in moving forward and the thing dearest to SAFE—the protection of public health. Ms. Gora has worked on this issue for over ten years in both Washington State and Idaho. She believes it is possible to conduct a reasonable, publicly responsible burn program that does protect public health. Washington burns about 200,000 acres a year in the 11 counties in eastern Washington. After SAFE negotiated an agreement there in 2000, the complaints dropped from thousands down to seven last year. It is an engineering question of how much is burned, when, where, how close to each other, and the meteorological conditions. She believes the Idaho statute combines the sensible elements needed to provide protection, and that the program is carefully and thoughtfully designed to allow DEQ to make burn decisions when it is clear public health will not be harmed. It takes special precautions to protect the most sensitive people.

Ms. Gora said SAFE is also very pleased that the Idaho Crop Residue Disposal Program will be completely transparent to the public. Each grower will have a permit, and that permit will have conditions under which the grower can burn. The location of the burn will be available for the public to see and will be on the Web. SAFE looks forward to working with the program and providing feedback as it progresses.

Dr. MacMillan asked what options were available to growers who were unable to burn because conditions didn't meet the requirements of the program. Mr. McGown said that based on how the Nez Perce program has operated, DEQ expects the burns to be able to move forward under this program; however, conditions could develop that would not allow a grower to burn. This could harm the productivity of the next year's crop, but the biggest concern would be if growers were unable to burn multiple years in a row.

Patti Gora noted that Washington State allows no burning of grass, and production has not gone down, but has gone up in the state. There are alternative means of managing grass without burning, such as “crew cutting” the grass. The plant doesn’t need to be “shocked” by the burning; it needs sunlight to get to the crown of the plant to produce the tillers which bear the seed. She said some very good research shows that burning is only needed every other year to get the same kinds of yields and rotations. Different solutions are used depending on the soil type and conditions. She noted that times have occurred in the past, when it was so wet that the growers in Idaho could not burn.

Kent Lauer, Government Affairs Director for the Idaho Farm Bureau, said without burning there would be no grass seed industry in Idaho—it is that vital a tool to the farmers. Mr. Lauer believes burning is critical to producing a good crop, and if the growers were unable to burn for a couple of seasons, their operations would cease. He pointed out that grass seed growers in Idaho supply most of the grass seed in the United States, and thinks no other viable, economic means are at their disposal.

Dr. MacMillan asked DEQ to update the Board periodically on progress of the program. Mr. McGown said he would be happy to present the annual review of the program to the Board.

➤ **MOTION:** Dr. MacMillan moved the Board adopt, as temporary rules, the Rules for the Control of Air Pollution in Idaho, as presented under Docket No. 58-0101-0801, with an effective date of April 2, 2008.

**SECOND:** Nick Purdy

**VOICE VOTE:** Motion carried by unanimous vote.

Don Chisholm asked if the process for the generation and approval of a SIP had ever been challenged. He commented it appears some of the implications of the SIP are the equivalent of rules without rulemaking actually occurring. Lisa Kronberg, Deputy Attorney General, said the specific regulatory requirements that are in SIPs are either passed through the legislature or are part of rules approved by the Board. The SIP revision is released in a public comment package to allow for public comment. The SIP revision itself actually comes from the governor’s office and is delegated to Director Hardesty to forward to EPA. She explained the Clean Air Act asks for SIP revisions to come from the governor. The plan may contain rules that the Board has seen and promulgated.

**AGENDA ITEM NO. 4:                    CONTESTED CASE AND RULE DOCKET STATUS REPORT**

Paula Wilson reviewed the docket status report and noted that a number of new rules will soon be added. The April Board meeting is currently scheduled for April 23 and 24, but it appears the agenda items could easily be completed in one day.

Doug Conde updated the Board on the Gold Fork contested case. A three-day evidentiary hearing was held recently, and the hearing officer requested written closing arguments. Those are due next week, and then a decision will be issued.

Mr. Conde said the Pristine Springs Board decision was appealed to the District Court. The Court issued its opinion last week affirming the Board’s decision. The Court found that the

Board's decision had a rational basis, was reasonable, was not arbitrary and capricious, and that there was substantial evidence to support the decision. Regarding the TMDL issue, the Court found that DEQ does have the authority to provide allocations to sources on unlisted, unimpaired tributaries to a listed water body. Mr. Conde feels this was a good decision for the TMDL program. The state of Idaho is in the process of negotiating the purchase of the Pristine Springs facility, and this may impact future actions in this case.

- b. Update on the mercury issue and fish tissue sampling and monitoring results throughout spring and summer.

Barry Burnell presented a report on the 2007 mercury fish tissue testing results (Attachment 1). The preliminary mercury results show that:

- 30 out of the 50 lakes the fish samples were taken from were below the mercury criteria.
- 62 of the 89 fish samples were below the criteria.
- Largemouth and Smallmouth Bass and Walleye usually exceed the criteria.
- Rainbow Trout are usually below the criteria.

Mr. Burnell noted that ten lakes or reservoirs in Idaho currently have mercury fish consumption advisories and one has an advisory for selenium (East Mill Creek). Based on the findings of the 2007 testing, it is likely that more individual water body advisories will be issued, or possibly a statewide advisory based on fish species will occur.

Mr. Burnell reviewed the plans for mercury testing in 2008:

- Monitor mercury wet deposition at:
  - Craters of the Moon
  - Lake Lowell
  - McCall
- Conduct fish tissue survey in large rivers
- Follow up on Silver Creek
- Develop comprehensive mercury data base
- Coordinate research with other states and EPA regions.

Director Hardesty said Nevada notified her yesterday that two of its gold production facilities have installed new controls that will reduce mercury emissions from around 890 pounds per year to one. Nevada has also issued a shutdown order for Jarrett Canyon Mines for failure to comply with an order to reduce mercury emissions. The mine's gold roasters will not be able to operate until controls are installed that comply with Nevada's directives.

**AGENDA ITEM NO. 5:            LOCAL REPORTS AND ITEMS BOARD MEMBERS MAY WISH TO PRESENT**

Kermit Kiebert asked for an update on the Sand Creek 401 appeal. Doug Conde briefed the Board on the status of the appeal of the 401 water quality certification for the Sand Creek Byway Project. He also provided a brief overview of the appeal process for 401 certifications.

Chairman Cloonan said some state boards have recently proposed legislation to change the way they are compensated. Several options in the statute set out the level of compensation and whether the members are included in PERSI, the state retirement plan. If a board member

contributes to PERSI, federal tax law does not allow a deduction for contributions to an IRA account (this does not apply to 401k accounts). If this is a concern to members, the Board may want to look at its options.

The meeting adjourned at 12:10 p.m. so members could attend the Senate Resources and Environment Committee meeting and the confirmation hearing of members Craig Harlen, Dr. Randy MacMillan, and Nick Purdy before the Senate Health and Welfare Committee.

/s/

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Dr. Joan Cloonan, Chairman

/s/

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Craig Harlen, Secretary

/s/

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Debra L. Cline, Management Assistant and Recorder

### **ACTION ITEMS**

- a. Ground Water Quality Plan – Response to Board questions, “Does it need to be updated, and is it appropriate for the Board to take any action?”
- b. Update on the mercury issue and fish tissue sampling and monitoring results throughout spring and summer.
- c. Report from Barry Burnell on the results of testing for pharmaceuticals and personal care products in surface water and ground water in Idaho.