



State of Idaho
DEPARTMENT OF ENVIRONMENTAL QUALITY
BOARD OF ENVIRONMENTAL QUALITY

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IDAHO BOARD OF ENVIRONMENTAL QUALITY

MINUTES

April 25, 2008

The Board of Environmental Quality convened on April 25, 2008, at 9:30 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 (via telephone)
Craig Harlen, Secretary (via telephone)
Donald J. Chisholm, Member
Dr. John R. "Randy" MacMillan, Member
Nick Purdy, Member

BOARD MEMBERS ABSENT

Kermit V. Kiebert, Member

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
Carl Brown, Air Quality Analyst
Debra Cline, Management Assistant to the Board
Douglas Conde, Deputy Attorney General
Orville Green, Administrator, Waste Management & Remediation Division
Ken Hanna, Air Quality Permitting Analyst
Phyllis Heitman, Management Assistant
Lisa Kronberg, Deputy Attorney General
Mike Simon, Stationary Source Program Manager
Faye Weber, Administrative Assistant
Tim Wendland, Loan Program Manager
Paula Wilson, Rules Coordinator

OTHERS PRESENT:

Joe Baird, Baird Hanson
Pat Barclay, Idaho Council on Industry and Environment (ICIE)
Suzanne Budge, SBS Associates
Justin Hayes, Idaho Conservation League (ICL)
Linda Jones, Holland & Hart
Alex LaBeau, Idaho Association of Commerce and Industry (IACI)
Jack Lyman, Idaho Mining Association (IMA)
Suki Molina, ICL
Robbin Finch, Boise City
Kent Lauer, Idaho Farm Bureau
Krista McIntyre, Stoel Rives
Pat Nair, EPA
Jim Obland, Idaho City
Alan Prouty, IACI/J. R. Simplot Co.
Keith Ridler, Associated Press
Jayson Ronk, IACI
Todd Tucci, Advocates for the West
Courtney Washburn, ICL
Leigh Woodruff, EPA

- ❖ 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

Chairman Joan Cloonan opened the floor to public comments on topics not specifically included on the agenda. No comments were received.

AGENDA ITEM NO. 1: ADOPTION OF BOARD MINUTES

a. November 15, 2007 meeting minutes

- **MOTION:** Don Chisholm moved the Board approve the November 15, 2007, minutes as presented.

SECOND: Dr. Randy MacMillan

VOICE VOTE: Motion carried by unanimous vote.

b. Action Items

- 1) Ground Water Quality Plan – does it need to be updated; is it appropriate for the board to take action?

Chairman Cloonan reported no action has been taken on this item. It will remain on the action items list for future discussion.

2) Update on mercury fish tissue sampling and monitoring results
Barry Burnell, Administrator, DEQ Water Quality Division, presented a report at the March 12 Board meeting. He will report to the Board as new findings are developed.

AGENDA ITEM NO. 2: DIRECTOR'S REPORT

Curt Fransen, Deputy Director, presented the report for Director Toni Hardesty, who was unable to attend due to a scheduling conflict.

a. Legislative Wrap-up

Deputy Director Fransen updated the Board on the following legislative issues:

- Crop residue burning legislation
- Ground water rulemaking
- Vehicle emission testing legislation
- New federal National Ambient Air Quality Standards (NAAQS) standard for ozone

Nick Purdy asked that the Board be notified when new administrators are appointed for the DEQ Twin Falls regional office and the Idaho Falls regional office. Mr. Fransen said Director Hardesty is currently interviewing candidates for those positions and will appoint acting administrators in the interim.

AGENDA ITEM NO. 3: FY2009 STATE WASTEWATER LOAN PRIORITY LIST

Barry Burnell, Administrator, DEQ Water Quality Division, presented the proposed fiscal year 2009 State Wastewater Loan Priority List for the Board's review and approval.

Tim Wendland, Loan Program Manager, explained how the priority list is developed and how DEQ engineers determine the priority of loan requests based on points.

- **MOTION:** Dr. Randy MacMillan moved the Board approve the FY2009 State Wastewater Loan Priority List as presented by the Department of Environmental Quality.
SECOND: Don Chisholm
VOICE VOTE: Motion carried by unanimous vote.

AGENDA ITEM NO. 4: FY2009 STATE WASTEWATER PLANNING GRANT PRIORITY LIST

Barry Burnell presented the fiscal year 2009 State Wastewater Planning Grant Priority List. He explained the list is used to fund facility planning, not construction. These are state dollars used to issue grants to cities so they can prepare wastewater facility plans. A similar process is used to develop and rank all four of the priority lists presented today. The lists go out for public comment and are then revised as needed to respond to the comments. Mr. Burnell said no requests were received for public hearings on any of the lists this year, so no public hearings were held.

Tim Wendland reviewed the grant list and responded to Board questions regarding the number of requests received for grants, what percentage DEQ is able to fund, and how long cities have to

stay on the list before receiving a grant. Mr. Wendland explained DEQ has 30 grant requests on the priority list this year and will be able to fund ten of them. Some communities are on the list for a number of years before they either receive funding from DEQ or pursue funding elsewhere.

- **MOTION:** Marti Calabretta moved the Board approve the FY2009 State Wastewater Planning Grant Priority List as presented by the Department of Environmental Quality.
- SECOND:** Don Chisholm
- VOICE VOTE:** Motion carried by unanimous vote.

AGENDA ITEM NO. 5: FY2009 STATE DRINKING WATER LOAN PRIORITY LIST

Barry Burnell presented the Fiscal Year 2009 State Drinking Water Loan Priority List. He explained these loans will be used for the construction of drinking water treatment works, collection systems, reservoirs, standby power, or other infrastructure needs to help communities meet their state drinking water obligations.

Tim Wendland said the draft priority list was revised to add additional projects to the fundable list. After having accounting staff reassess its assumptions in computing the loan program's resources in the future, it was determined an additional \$5 million would be available to fund projects. As a result, Central Shoshone County Water District and the Grandview Water and Sewer Association were added to the fundable list. A total of 41 entities are on the priority list, with 11 of the projects on the fundable list for FY2009. Mr. Wendland said that while the number of loans DEQ was able to make has gone up in the last few years, funds remain insufficient to meet all the state's needs.

Barry Burnell said the challenge the cities and districts that do not make it onto the fundable list face is to seek alternative funding through the bond bank, rural development, the Department of Commerce, or their own rate structures. It is part of the normal operation of the program for some cities to remain on the priority list for a few years before they progress on to the fundable list.

- **MOTION:** Dr. Randy MacMillan moved the Board approve the FY2009 State Drinking Water Loan Priority List as presented by the Department of Environmental Quality.
- SECOND:** Craig Harlen
- VOICE VOTE:** Motion carried by unanimous vote.

AGENDA ITEM NO. 6: FY2009 STATE DRINKING WATER PLANNING GRANT PRIORITY LIST

Barry Burnell presented the fiscal year 2009 State Drinking Water Planning Grant Priority List. He explained these grants will be used to fund projects to develop facility plans to allow public water systems to identify alternatives for providing additional treatment, storage, service, or distribution needs.

Tim Wendland said DEQ has approximately \$250,000 available each year to provide planning grants. Prospective grant recipients are seeking from \$4,000 to \$40,000 in funding. DEQ will fund the first 16 grant requests (the fundable list), for a total of \$220,000 in grants. The remaining funds will be kept in reserve to fund increase requests that may be received

throughout the year for existing grants. Some of the first 16 entities may no longer need the grant because they have made other arrangements. If this happens, DEQ will go further down the priority list. During the public comment period, Mission Creek Water Association and Idaho City were added to the original priority list.

Jim Obland, Idaho City, testified regarding the serious problems Idaho City has experienced with its drinking water supply. The city's drinking water system has failed a number of times due to problems related to maintenance and age of the system. The city has also been under a boil order because of water quality concerns. Mr. Obland is chairman of the infrastructure committee formed by the city council to investigate the problems with the system and develop solutions. The committee is requesting a grant to pay for an engineering study and planning so it can move forward. The city is currently in 17th place on the priority list. Mr. Obland asked if the city could be moved up on the priority list.

Mr. Burnell said Idaho City was added to the priority list after the public comment process. The ranking on the priority list is determined by the number of points assigned by the engineers in DEQ regional offices. At this time, DEQ has funds available to fund the first 16 requests on the list; however, funds may become available to fund additional grant requests depending on the first 16 entities' needs. It is not uncommon for entities to ask for small increases in the amount of their funding request to cover unforeseen costs. The money DEQ holds in reserve is used to pay these requests. If DEQ does not receive requests for increases, or one of the first 16 entities has found alternative funding since applying for a grant, which is not uncommon, those funds will become available and DEQ will seek to assist Idaho City.

Don Chisholm asked if DEQ had an outreach program to work with municipalities in a proactive way to help them recognize the need for upgrades and repairs in advance so they have time for planning. If a city knew such expenses would be coming, it could prepare for the expenses by making small increases in its rates a few years in advance.

Mr. Burnell assured that DEQ is committed to providing technical assistance to public drinking water systems. The Drinking Water Program provides newsletter information, and regulatory information, and has staff available to work with water systems as they respond to problems in both preventative and reactionary situations. On the preventative side, DEQ conducts a sanitary survey, on a five-year rotating basis, of each of the 2100 public water systems in Idaho to evaluate the technical, financial, and managerial aspects of the systems. It is DEQ's process to grade the systems and identify shortfalls or needs to improve the infrastructure of the systems. DEQ partners with Boise State University's Finance Center, which provides information on funding sources available to communities and assistance identifying rates and rate increases. The Idaho Rural Water Association also provides assistance to public water systems as needed. There is room for improvement as Idaho municipalities manage their systems so that they have funds available as needs arise.

Mr. Burnell believes Idaho City has experienced a loss of water throughout its system, and it has been a bit unexpected. He hopes as DEQ evaluates its Water Planning Grant and Priority List throughout the course of the year and monitors the funds available, Idaho City's grant request can be funded.

- **MOTION:** Nick Purdy moved the Board approve the FY2009 State Drinking Water Planning Grant Priority List as presented by the Department of Environmental Quality.
SECOND: Don Chisholm
VOICE VOTE: Motion carried by unanimous vote.

AGENDA ITEM NO. 7: IDAHO CONSERVATION LEAGUE’S PETITION FOR ADOPTION OF TEMPORARY RULE AND INITIATION OF RULEMAKING, IDAPA 58.01.01, RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO, (TEMPORARY RULE), AND NEW RULES TO CONTROL MERCURY EMISSIONS IN IDAHO (PENDING RULE)

Justin Hayes, Program Director, Idaho Conservation League (ICL), presented a petition (Attachment 1) requesting the Board seek adoption of a temporary rule amending the Rules for the Control of Air Pollution in Idaho that would have the immediate effect of prohibiting the issuance of Permits to Construct for facilities which have the potential to emit greater than five pounds of mercury per year. The petition further requests the Board initiate a negotiated rulemaking to solicit greater public comment and involvement in crafting rules to develop and implement an Idaho state permitting process designed to limit and control mercury emissions from facilities operating within the state of Idaho. ICL believes the rules are needed to ensure that Idaho-based mercury sources are not injuring the health of humans and the environment.

The petitioner requests the rules address the following issues and others as appropriate:

- Identify all facilities in Idaho that have the potential to emit mercury.
- Require all facilities that have the potential to emit mercury, in an amount greater than that which the department determines to be de minimis, to achieve the Lowest Achievable Emission Rate (LAER) for mercury.
- Require all new and existing mercury emitting facilities to monitor their mercury emissions and annually report their mercury emissions to the department.
- Institute a mercury emitter permit fee to provide funding to support statewide fish tissue mercury monitoring efforts and deposition studies.

Mr. Hayes stated his support of and confidence in the negotiated rulemaking process used by DEQ over the past five years. He believes it is a great opportunity for difficult issues to be discussed by the various stakeholders, and more often than not, results in a good outcome that satisfies all parties.

Mr. Hayes discussed ICL’s interest and concern about the mercury issue and submitted 12 attachments on scientific studies discussing the environmental and human health concerns regarding mercury. He said ICL members are gravely concerned about the elevated levels of mercury identified in many water bodies and fisheries throughout Idaho. The Idaho Department of Health and Welfare has issued mercury-related fish consumption advisories on ten water bodies across the state. They are geographically widespread. A number of advisories are also pending.

Mr. Hayes pointed out that for the most part, contamination is not entering the water bodies from the direct discharge of effluent; it is from the atmospheric deposition of mercury. DEQ, EPA, ICL and others have been working with neighboring states to limit mercury contamination

coming into Idaho from gold processing facilities in Nevada and a cement facility in Oregon. Those states have made significant progress in controlling emissions; regulations have been developed and the requirement for controls has been brought to bear. He noted this is an important point to remember because it proves that the technology to reduce emissions exists and regulations are effective. Those facilities are operating fine under the new regulatory environment and they are installing effective controls that are cost-efficient for the facilities and protective of human health and the environment.

Mr. Hayes believes with Nevada on the right track and Oregon taking steps in the right direction, it is the right time for the state of Idaho to consider whether it has rules in place that are protective of Idaho citizens, Idaho water quality, and the health of neighboring states as well. ICL thinks the current Idaho air regulations provide sufficient regulation of mercury that is inhaled. Mercury is regulated through IDAPA 58-0101-210 and also in the Toxic Air Pollutant non-carcinogenic increments, 585. Those sections set an acceptable ambient concentration limit of 0.0025 milligrams per cubic meter. The ICL believes this is not a fully protective measurement because it is controlling mercury emissions on the presumption that the most relevant risk to human health and the environment is from the inhalation of mercury. This concentration is based on inhalation risks. It has become increasingly obvious over the last few years, however, that the true risk to human health is not from inhalation of mercury—it is from consumption of mercury-contaminated fish, so Idaho's air rules are targeting the wrong vector for health risks.

Mr. Hayes said the current rule structure allows Idaho facilities to emit very large amounts of mercury. ICL conducted a modeling exercise using a hypothetical facility with a 60-meter stack and concluded the lawful limit to achieve the first increment is over 300,000 pounds of mercury per year. Fortunately, no facility is emitting 158 tons of mercury per year, but if one should decide to locate in Idaho, nothing in the DEQ regulations that would require a limit beneath 158 tons per year.

ICL participated in the negotiated rulemaking DEQ conducted in 2003 to amend Idaho's standards regarding mercury contamination in water bodies. The rulemaking concluded that the most relevant measure for mercury in the environment, as it affects human health, is the amount of mercury in fish tissue. As a result of this work, the water quality standards are targeting the appropriate vector.

Mr. Hayes briefly discussed each of the attachments to ICL's Petition:

- Attachment 1 – *Mercury Matters, Linking Mercury Science with Public Policy in the Northeastern United States*
- Attachment 2 – *Toxicological Effects of Methylmercury*, Board on Environmental Studies and Toxicology, National Research Council
- Attachment 3 – *Public Health and Economic Consequences of Methylmercury Toxicity to the Developing Brain*
- Attachment 4 – *Sources of Mercury Wet Deposition in Eastern Ohio, USA*
- Attachment 5 – *Whole-Ecosystem Study Shows Rapid Fish-Mercury Response to Changes in Mercury Deposition*
- Attachment 6 – *Safe Fish Eating Guidelines*, Idaho Department of Health & Welfare
- Attachment 7 – *Focus on Mercury in Fish*, DEQ

- Attachment 8 – *Preliminary Mercury Deposition Modeling for Selected Idaho Watersheds*, EPA
- Attachment 9 – *Salmon Falls Creek Subbasin Mercury Monitoring, Assessment, and TMDL*, DEQ
- Attachment 10 – *Executive Summary, Salmon Falls Creek Subbasin Assessment and TMDL*, DEQ
- Attachment 11 – *Model-Based Analysis and Tracking of Airborne Mercury Emissions to Assist in Watershed Planning*, EPA
- Attachment 12 – *Mercury Deposition Modeling Results for Selected Idaho Watersheds*, US EPA Office of Water

He emphasized the importance of treating “hot spots” of mercury deposition by controlling local and regional sources; it is not sufficient to say it is a global problem and ignore local emissions. One study found that 65% of the mercury contamination in the study area originated from local sources.

Mr. Hayes said ICL also hopes to be able to discuss Potlatch’s proposal to change its air quality permit to allow the facility to burn trash. ICL estimates this proposal could increase Potlatch’s potential to emit mercury to 1700 pounds per year. He noted that emitting 1700 pounds of mercury into the Lewiston valley is the equivalent of emitting 13 coal-fired power plants’ worth of mercury into that airshed. No modeling has been conducted, and the public is very concerned.

Chairman Cloonan commented it is inappropriate to discuss the issue at this time and would be speculative to discuss the details of the Potlatch permit because it is still in review.

Mr. Hayes explained this pending permit emphasizes the vulnerability of Idaho’s air quality rules and is the reason ICL is requesting a temporary rule. Emitting 1700 pounds of mercury per year would be a lawful permit, and DEQ would be obligated under its current rules to issue that permit. ICL believes it would be more protective to have rules that would urge facilities to achieve the lowest achievable emission rates at this time. ICL feels it would not be in the best interest of the citizens of Idaho to move forward with a negotiated rulemaking to be more protective of human health while simultaneously permitting facilities that will have a serious impact on the local environment.

In closing, Mr. Hayes said ICL is requesting two actions: to initiate negotiated rulemaking and to approve the need for a temporary rule. While ICL understands only the Governor’s Office can approve a temporary rule, it is requesting the Board approve the need for a temporary rule and seek approval from the Governor for that rule. He added ICL hopes DEQ will be involved in bringing the request for a temporary rule to the Governor’s Office and working with the Governor to develop a temporary rule. The language ICL has asked for is in some regards open for negotiation. The limit of five pounds per year was based on Nevada’s rule, and is meant to ensure the state has the resources to allow staff to focus on large, significant problems, not de minimus amounts of under five pounds.

Chairman Cloonan thanked Mr. Hayes for his presentation and asked DEQ to provide its perspective on the petition. Deputy Director Fransen said he would like to have Doug Conde, Deputy Attorney General and senior legal counsel for DEQ, address the statutory and regulatory issues relating to the petition, provide an outline of the general options available to the Board,

explain any specific or procedural issues pertaining to the temporary rule, and address the question of stringency. Martin Bauer, Administrator of the Air Quality Division, will then provide the program perspective on the negotiated rulemaking issue.

Doug Conde outlined the Board's options for action in response to the petition:

- 1) Deny the petition entirely, realizing the petition asks for two separate things (to proceed with a temporary rule and to initiate negotiated rulemaking). This action would be based on a determination that no rulemaking needs to be undertaken at this time. The Board would have to make this determination in writing, which would constitute an order that could be appealed, and it would have to explain its reasons for the denial.
- 2) Grant the petition in its entirety. This action would entail asking the Governor to approve the temporary rule, which DEQ would then bring back to the Board for adoption, and then directing DEQ to initiate negotiated rulemaking.
- 3) Respond to the entire petition (in respect to both the request for a temporary rule and a negotiated rulemaking) by initiating negotiated rulemaking and indicating that it needs to collect more information and hear from other stakeholders, and the best way to proceed would be to direct DEQ to publish a notice of intent to promulgate a rule, which would initiate a negotiated rulemaking to address both the subject matter in the temporary rule and what ICL has suggested as the broader mercury-related issues.
- 4) A combination of the above options such as denying the request to seek a temporary rule because it is not warranted at this time, but proceeding with a negotiated rulemaking on the broader issues, or just the opposite and granting the request to seek a temporary rule and denying the petition with respect to proceeding with a negotiated rulemaking.
- 5) Deny the petition entirely and direct DEQ to come back to the Board with additional information.

Mr. Conde added that if the Board chose to grant the request for a temporary rule, it would need to make the findings set out in the Administrative Procedures Act, Idaho Code § 67-5226 that it is needed for:

- (a) protection of public health, safety, or welfare; or
- (b) compliance with deadlines in amendments to governing law or federal programs; or
- (c) conferring a benefit.

Marti Calabretta asked how a temporary rule would affect existing air quality permits and pending applications. Mr. Conde replied that any new rule would not affect an existing permit. If a facility had a permit in hand, it would operate under its existing permit until that permit needed to be reissued. He said the Idaho Association of Commerce and Industry had also posed the question of how a new rule would affect a pending application. Mr. Conde said he was not certain how a new rule would affect DEQ's action on a pending application, but referenced an Idaho Supreme Court case where the Department of Water Resources changed its rules while a water rights permit application was pending. The Court found that having an application filed does not provide a vested right, and therefore the new rule would apply to IDWR's decision on the application. Mr. Conde said he would need to thoroughly review the case and consider the particular facts in the matter. He believes it does not matter regarding the decision before the Board today, except for potentially with the Governor's finding of a basis for a temporary rule.

Lisa Kronberg, Deputy Attorney General, discussed the two sections in the Environmental Protection and Health Act that address stringency for Clean Air Act purposes. Section 39-118(b) states that if the federal government has adopted a specific standard, emission limitation, or control technology, the Board is not allowed to adopt something more stringent without specific legislative approval. Ms. Kronberg said the Clean Air Act prescribes mercury standards under the new source performance standards and under the NESHP provisions. One example is the new source performance standard for solid waste incineration units. The standard sets a mercury emission limit that is higher than the five pounds stated in the requested temporary rule, so this would be a stringency issue.

Chairman Cloonan asked if the stringency laws require the Board to first seek permission from the Idaho Legislature before adopting any rule that is more stringent. Ms. Kronberg believes the law allows the Board to promulgate a rule that is more stringent, but the rule could not become effective until approved by the legislature.

Don Chisholm clarified that this process differs from other rules adopted by the Board in that others become effective automatically unless they are rejected by the legislature. A rule that is more stringent than a federal standard requires specific action by the legislature before it is effective.

Ms. Kronberg said the second law regarding stringency the Board would have to take into consideration is Section 39-107D, which requires; (1) that the notice of proposed rulemaking specify that the rule is broader or more stringent than federal law or not requested by federal law; (2) the rule be based on peer-reviewed science; and (3) the rule specify who it could affect and expected risks.

Mr. Hayes noted that the Potlatch permit was carefully crafted to avoid the protective federal limitation on mercury emissions because it would not be classified as an incinerator. Chairman Cloonan reiterated that the Potlatch permit is not on the agenda for discussion at this time.

Don Chisholm said he assumed the Idaho Legislature would probably grant an exemption from the requirements of § 39-107D if a rule were developed that could pass the requirements of § 39-118B. Ms. Kronberg said she thought the legislature would require the Board to comply with the requirements of both stringency statutes.

Deputy Director Fransen pointed out that if the Board was to direct DEQ to begin negotiated rulemaking now, public notice would be published in June, and meetings could be held in June and July. The deadline for submitting a proposed rule for the 2009 legislative session is August 1, 2008; otherwise, it would probably be the 2010 legislative session before a rule could become effective.

Martin Bauer discussed programmatic issues regarding the petition for negotiated rulemaking and how a temporary rule would be implemented.

Regarding a temporary rule, he noted that:

- The level for mercury in the Idaho TAP rules is much higher than five pounds per year. If a source emits strictly mercury or strictly TAPs, and does not require some other type

of permit, it would not be in DEQ's system. This would make it very difficult to implement a temporary rule.

- Idaho TAP rules are based on inhalation.

Regarding negotiated rulemaking, he pointed out that:

- In August 2007, the Board directed DEQ to move forward with determining whether the current regulatory structure adequately protects public health and the environment and to propose a process that will ensure adequate public input on the mercury issue, whether it is to initiate a mercury working group, negotiated rulemaking, or some other interim step.
- The requested information and recommendation have not been developed yet due to numerous demands on DEQ staff and resources, the pending court case, and because DEQ wants to see how EPA and surrounding states address the mercury issue.
- The Board could respond to ICL's petition by initiating rulemaking or by some other less formal fashion as suggested in the direction given in August 2007.

Craig Harlen asked if Monsanto's permit has a permissible level higher than the 630 pounds it is currently emitting or if it is operating at the maximum level. Mr. Bauer said he did not have the details of the permit, but would get the information and report to Mr. Harlen.

Mr. Harlen asked for a report on the status of the Potlatch permit. Mr. Bauer stated Potlatch has submitted an application and DEQ has prepared a draft permit it will send to the facility soon. DEQ will then negotiate the conditions of the permit with the facility. Once that process is complete, the draft permit will be released for public review and comment.

Dr. MacMillan asked if DEQ conducted an integrated analysis of the impacts a facility would have on the airshed and watershed before issuing permits. Mr. Bauer said DEQ does not have a formal process that looks at how air emissions might cause a TMDL or water quality problem, however, DEQ air and water staff do communicate regarding possible problems.

Dr. MacMillan asked if the fish tissue studies DEQ conducted identified potential sources of mercury. Mr. Burnell said the study conducted last year was a randomized, stratified sampling of fish in lakes and reservoirs in Idaho. The approach was to select random locations to draw statewide conclusions; it was not a targeted sampling or protocol to look at regional, local, or global deposition of sources of mercury.

Dr. MacMillan asked if Soda Springs Reservoir would be included in the water bodies to be studied during the coming year. Mr. Burnell said Soda Springs Reservoir was not included in the last study and would not be included in this year's study. This year's targeted mercury monitoring will be a randomized study focusing on large river systems.

Dr. MacMillan asked how the data from the studies would be used. Mr. Burnell said DEQ will include the data in the water bodies assessment report that it presents to EPA. The information in this report is used to determine which water bodies are placed on the 303d list of impaired waters. DEQ will then develop TMDLs for the impaired water bodies. The data will also be shared with the Idaho Department of Fish and Game and the Idaho Department of Health and Welfare, which chairs the Idaho Fish Consumption Advisory Program.

Dr. MacMillan asked if DEQ considered air emissions when it developed mercury TMDLs. Mr. Burnell said DEQ has prepared two mercury TMDLs. The Salmon Falls Creek Reservoir TMDL identifies various sources of mercury, including air sources such as the geothermal aspects of mercury from geologic sources and rangeland/forest fires. The Jordan Creek TMDL primarily addresses a legacy mining issue based upon mercury residing in the sediments of the stream, but it also identifies global air deposition as part of the problem. The other mercury TMDL that is being considered, but has not yet been developed, is for Brownlee Reservoir. DEQ is currently gathering information and will work with the Oregon Department of Environmental Quality on this project.

Dr. MacMillan asked if the TMDL process shows that air emissions are a significant source of mercury depositions on water bodies, and how DEQ's Water Quality Division would work with the Air Quality Division to resolve the issue. If a facility's permit sets its emissions at a certain limit, can a TMDL affect that limit? Mr. Burnell said he knows of no linkage between the Clean Air Act and the Clean Water Act that would allow DEQ to change the levels of an air permit. The NPDES section of the Clean Water Act has a mechanism to address certain pollutants that are discharged, but there is no parallel to that process in the Clean Air Act.

Nick Purdy questioned why the temporary rule requests a limit of five pounds for all sites when Mr. Hayes had commented he was uncomfortable with setting a specific level for mercury emissions for each facility because they are site-specific. Mr. Hayes replied that he views the temporary rule as a temporary, precautionary measure to ensure something is not done before a permanent rule can be established that will have to be undone later. He believes a negotiated rulemaking that involves all the stakeholders and has more site-specific information pertinent to existing and proposed Idaho facilities might result in a number very different than five pounds, or it might utilize a requirement that a facility use the best available technology to ensure the lowest emission levels possible instead of setting a specific level. Mr. Hayes does not want to prejudge the outcome of the rule, but thinks it needs to be technology-driven.

Mr. Purdy complimented ICL on bringing this issue forward, but feels it has not clearly demonstrated it meets the requirements set for an emergency rule, and specifically, for the five-pound limit. He believes Idaho needs to move forward with the mercury issue, but does not want to approve a temporary rule that may be counter-productive or have unintended consequences. He asked if ICL was adamant about keeping the five-pound limit in the rule. Mr. Hayes responded ICL was flexible regarding that level. It was included in the rule because it is a regionally developed regulatory number from a neighboring state. The state of Idaho's air regulations have a screening level that amounts to about 27 pounds per year, and if a source is beneath that number, DEQ would not know it existed because it would not be required by law to report its emissions. If the Board feels the screening level of 27 pounds per year would be a more appropriate limit, ICL would be willing to negotiate.

Jayson Ronk, Vice-president, IACI, presented testimony on behalf of IACI, ICIE, and IMA ("the organizations") in opposition to the ICL petition (see Attachment 2 for full written comments). The organizations have reviewed the petition and are all strongly opposed to both elements (the temporary rule and the request to initiate rulemaking) for the following reasons:

- The request for a temporary rule is unsupported and fails to present any basis upon which the Governor could make a finding that such an administrative action is required.
- ICL's request for a temporary rule is a clear circumvention of the legal procedure for public participation in the air quality permit application process.
- DEQ already implements various rules governing mercury emissions and mercury deposition in the environment. An air emissions permit applicant must conform to these provisions to ensure that emissions of pollutants will not injure or unreasonably affect human or animal life or vegetation. ICL's petition fails to demonstrate that this body of regulation is inadequate to protect public health and the environment.
- A temporary rule would not apply retroactively. ICL's petition is a thinly veiled attempt to thwart the existing, legitimate permit application process commenced in good faith by current applicants. Pending complete permit applications could not be retroactively denied, even if the criteria for a temporary rule were satisfied by the ICL petition.
- No information concludes that additional regulation of Idaho air emissions of mercury will reduce mercury accumulation in aquatic systems.
- Idaho is not a significant source of mercury. EPA's Web site indicates that mercury emissions from stationary sources in the U.S. are declining. According to the Toxic Release Inventory database, Idaho emits much less mercury than neighboring states. Environmental and human health impacts of mercury are not localized, but are recognized by EPA to be global. Studies indicate that Idaho sources are not likely a significant source of mercury deposition in the West; more likely, mercury detected in Idaho's water and soil is attributable to naturally occurring sources or to global emitters.
- ICL failed to demonstrate a link between Idaho's stationary sources of mercury and water quality impacts and, therefore, cannot assume that by reducing mercury emissions in Idaho changes in water quality impacts in Idaho will result.
- Any proposed rule would have to comply with two statutory provisions: stringency and good science. These tasks are formidable challenges to developing a rule on mercury at this time in light of the current science on mercury emissions and deposition trends.

In conclusion, Mr. Ronk said the organizations urge the Board to reject ICL's request for temporary rulemaking and its request to initiate negotiated rulemaking. Until further scientific research or federal regulatory proposals are developed for mercury, it would be unreasonable for DEQ and stakeholders to undertake research and development of another state rule for air emissions of mercury.

Don Chisholm asked if the comment on Page 6 of the organization's written comments which states, "Fish advisories and public information on fish consumption effectively protect the public from current deposition impacts," is an accurate reflection of the organizations' position. Alan Prouty, Interim Chair of the IACI Environmental Committee, replied that the sentence is meant to reflect the belief that the Health Department sets conservative values for risks to the public and advises the public of those risks.

Mr. Chisholm asked if the organizations believed the current level of degradation should be allowed to continue, or if they supported taking actions to reduce the current level of

methylmercury in fish tissue to make it safe for human consumption. Mr. Prouty said the organizations do not oppose the goal of reducing methylmercury in fish; they oppose the method proposed in the petition. The organizations do not believe it would be effective or efficient to create an entire new regulatory program to further regulate air emissions of mercury in Idaho. Outside of one source, very few pounds of mercury are being emitted in Idaho. ICA has cited a couple of studies where a major source has impacted specific areas, but those studies do not relate to conditions in Idaho. The science is uncertain as to how mercury moves through the environment, and eliminating mercury from local air emissions may not solve the problem. The organizations are not saying that mercury is not a concern—just that what is proposed is unreasonable and not supported by science and technical information currently available about mercury in the West (i.e., that most of the mercury in the West is from global deposition or naturally occurring mercury in the environment). They see no need for a new extensive environmental program to deal with an issue that is beyond local control.

Marti Calabretta asked if the organizations believed any of the scientific information and studies submitted as attachments to the petition were invalid. Mr. Prouty said he had not seen the attachments submitted with the petition. He believes the regulated community just learned of the petition about ten days ago and cannot comment on the validity of the information at this time. Ms. Calabretta asked if the information included in the attachments was public information that was available to the public at the same time it was submitted to the Board. Chairman Cloonan said the materials are public information, but were not distributed to the public.

Pat Nair, Engineer, EPA Region 10 Office of Air, Waste and Toxics, presented a statement on behalf of Jim Wertz, Director of the EPA Region 10 Boise office, on the regulation of mercury (See Attachment 3 for full written comments). Mr. Nair discussed the health risks of mercury and explained ways it can be introduced into the environment. He said no one federal regulatory program has the authority to address all the ecosystem impacts of air emissions and effluent discharges containing mercury.

Mr. Nair described the efforts EPA has taken to address mercury contamination including:

- National rules that set limits on mercury emissions (the boiler Maximum Achievable Control Technology (MACT) and the Clean Air Mercury Rule (CAMR) for coal fired-power plants. (The CAMR rules were vacated due to a legal challenge and EPA is currently working with litigants to establish a timeline for developing a new boiler MACT.)
- At the regional level, EPA is developing a strategy to address mercury contamination in all media. Tentatively, unregulated atmospheric sources of mercury emissions have been identified as one of several key focus areas of the strategy to resolve regional mercury contamination issues.
- To assist in TMDL development nationwide, EPA has developed a national model called REMSAD, which estimates the relative contribution of atmospheric sources of mercury to deposition within watersheds. Final model results are expected in May – June 2008. EPA offers assistance to DEQ in using these results to evaluate the potential impacts of atmospheric mercury sources in Idaho.

Mr. Nair discussed how other states have developed rules to regulate emissions of mercury from air point sources. He said Massachusetts, Nevada, several New England states, and the Eastern

Canadian Provinces have developed regional strategies and regulations that have been very successful in reducing mercury emissions.

In conclusion, Mr. Nair said EPA believes mercury is a significant health and ecological concern. EPA has and continues to address this issue at the national and regional level. It supports evaluating the need to establish air emission rules to regulate mercury, including consideration of water-based impacts when doing so.

Dr. MacMillan asked if EPA believes Idaho has a mercury problem. Mr. Nair said EPA has acknowledged impacts to watersheds and, when linked with the fish tissue samples, EPA is definitely concerned about those impacts.

Leigh Woodruff, EPA, cautioned the interpretation of the REMSAD modeling until the final report is filed in May/June. He offered to brief the Board on the final results after it is completed this summer. The local EPA office will continue to work closely with DEQ on the matter.

Chairman Cloonan asked Martin Bauer to provide a briefing on current regulations for mercury in Idaho. Board members asked questions regarding how the rules are interpreted and applied. Mr. Bauer explained how DEQ uses discretion to assess risk to human health and the environment.

Don Chisholm asked if the risk assessment process would be the proper subject of a permanent rule and if the fish tissue standards are involved in the process. Mr. Bauer said the risk assessment process he discussed is part of the air quality rules and is based strictly on inhalation; it does not consider how mercury emissions enter the food chain.

Dr. MacMillan asked if the existing rules regulating mercury in Idaho were compliant with DEQ's responsibilities to protect public health and the environment. Barry Burnell said the water quality standards in Idaho are protective. The revisions made to the standards last year that added the fish tissue criterion were approved by EPA. He believes these more protective standards for surface water, along with programs to evaluate and monitor water bodies and fish tissue concentrations, are protective of public health and environment.

Dr. MacMillan asked if it would be possible for DEQ to divert efforts to focus on testing fish in the Soda Springs Reservoir so the information base could be developed more quickly. Mr. Burnell replied that as DEQ develops its monitoring program for this year, it will include supplemental work. DEQ will do its best to include testing at Soda Springs Reservoir.

Justin Hayes agreed that Soda Springs Reservoir would be a very important site for fish tissue testing. Several other water bodies in the immediate vicinity would also be worth investigating, including some wetlands areas in the Bear River and Blackfoot area.

Nick Purdy commented that while adequate science does not appear to be available at this time, a great deal of information will be available very soon, including EPA modeling information due in May-June 2008 and DEQ's final report on the fish tissue study. In addition, the Board directed DEQ to prepare an inventory of mercury sources in Idaho and develop a plan for regulating mercury in Idaho. Mr. Purdy feels this information will provide an adequate foundation for taking action in the near future. Although he believes there is a hole in Idaho's

mercury regulations, he does not think the ICA petition rises to the level necessary to declare a temporary rule.

Marti Calabretta asked if DEQ considered the accumulation of mercury from other sources or the facility being in a hot spot or having a fish consumption advisory when issuing a permit. Martin Bauer clarified that he did not believe there was a hole in the air rules; the air rules are protective for inhalation. If there is a hole in the regulation for mercury, it is that there is not a connection between the air and the water rules for mercury. He stated that from an air quality standpoint, DEQ does not have the regulatory method or science to consider accumulation of mercury from other sources when issuing an air permit to a facility. DEQ can look at whether fish consumption advisories have been issued for an area, but no connection between that and the air permit exists.

Ms. Calabretta asked if DEQ could take subjective action to change the requirement of a permit based on concerns about mercury pollution in the area. Mr. Bauer clarified it would require negotiation with the permittee.

Ms. Calabretta commented this is not a new issue for the Board. It has known for some time that a request to promote a negotiated rule would be forthcoming. The Governor's Office and the Department of Health and Welfare are well versed in fish tissue advisories as a tool to protect the public and interrupt the pathway of contaminated fish to infants, children, and pregnant women. This system relies on parental control, and we have no way of knowing how effective it is. She is concerned about the number of water bodies throughout the state that are under fish consumption advisories. Although the Board cannot change the global impact, she believes it should act locally and not continue to delay action while waiting for perfect information.

Don Chisholm asked if there was support for taking action to prevent new mercury sources from coming into the state to stop further degradation while the state determines the best path forward. Justin Hayes said he recognizes the ICA petition may be an imperfect vehicle and there seems to be a lot of concern about the temporary rule, but that is exactly what the petition is trying to accomplish. It is basically calling for a stop to new, large sources of mercury until Idaho can develop rules that set acceptable controls. He encouraged the Board to make changes it feels necessary to achieve this goal.

Mr. Chisholm commented that a presentation was made to the Board at a previous meeting on a proposal to build a clean coal-fired generating facility in the Soda Springs area. He believes the Board may support such a facility, but a rule is needed to let that happen. He encouraged the Board to take action to move forward in a progressive manner.

Martin Bauer briefly discussed the process DEQ would follow if it initiated negotiated rulemaking. It will be a long process, beginning with meetings to review the available science, to determining the scope of the rule, who it would involve, and what form it would take.

Craig Harlen feels the best way to protect human health and the most efficient use of DEQ resources is to first determine which water bodies have mercury contamination, establish fish consumption advisories, and then go back and identify where the contamination is coming from. After DEQ learns where the mercury is coming from, negotiated rulemaking can be initiated.

Chairman Cloonan added that having more information might also make the negotiated rulemaking more focused and efficient.

- **MOTION:** Nick Purdy moved the Board deny the petition for temporary rulemaking and negotiated rulemaking at this time, but that the Board instruct DEQ to prepare an outline and a plan that, if it did enter into negotiated rulemaking, it would have a road map to follow. He further moved the plan be presented to the Board at its next meeting in October 2008.

SECOND: Dr. Randy MacMillan

DISCUSSION: Chairman Cloonan asked if it was the intent of the motion that the stakeholders be included in the planning process. Mr. Purdy confirmed it was the intention of his motion, and was already stated in the Board's previous direction to DEQ to form a working group to set a path forward. He believes this action would put the public on notice that the Board is looking very seriously at entering into negotiated rulemaking.

Marti Calabretta asked for clarification that the Board would not be taking action before the October 2008 meeting. Chairman Cloonan stated the Board's next meeting was scheduled in October, but an additional meeting could be added during the summer.

Director Toni Hardesty asked for clarification that an assignment was being given to DEQ to prepare an outline of information, information needs, and a schedule for what needs to be done before beginning negotiated rulemaking, and that this would include meetings with the stakeholders to develop the outline or road map.

Marti Calabretta noted that any action by the Board today would not preclude other parties from petitioning DEQ for a temporary rule or negotiated rulemaking or informally asking the Governor to look into the matter.

Justin Hayes observed that the discussion appears to indicate the Board believes a regulatory issue needs to be addressed. He encouraged the Board not to deny the petition and merely direct DEQ to gather information. He believes the Board could initiate a starting point for the negotiated rulemaking now to provide a future target that the regulated community, ICL, DEQ and other agencies can put on their calendars and begin moving forward. He noted this motion is very similar to the one the Board made first at its meeting in Coeur d'Alene, and then again in Twin Falls, and failing to act will only further delay starting the process. He asked the Board to begin the process now by granting ICL's petition to initiate a rulemaking, or deny the petition, but nonetheless initiate a negotiated rulemaking on this exact same matter. A future date can be set to start the rulemaking as long as it is a time certain so that a timely and expeditious rulemaking can be planned.

Chairman Cloonan said it was not clear to her from the motion whether it was the intent that DEQ proceed with negotiated rulemaking. Mr. Purdy believes it is not clear from the information available at this time whether the negotiated rulemaking is needed and that will not be known until DEQ prepares the outline or plan.

Don Chisholm suggested for clarification, the motion be withdrawn and presented as two separate motions. Nick Purdy withdrew his motion and Dr. MacMillan withdrew his second.

Doug Conde said the Board must clarify its reasons for denying a petition so that it can be stated in the written order that must be prepared. His understanding from the deliberation was that the Board believes the petition should be denied because of a lack of information, a need for additional input from stakeholders, a defined regulatory process, and insufficient science showing the nexus between the air emissions and the mercury in the water.

Craig Harlen believes it is premature to consider expending the time and resources to bring the stakeholders together when basic information is lacking on where the mercury contamination in the water bodies is coming from.

MOTION: Nick Purdy moved the Board deny the Petition for Initiation of Rulemaking submitted by the ICL. Although the Board is concerned about the levels of mercury in Idaho waters and methylmercury in fish tissue, the Board denies the petition at this time because:

- a) there is a lack of information for rulemaking,
- b) there is a need for further input from stakeholders,
- c) studies will soon be completed and available for uses in rulemaking,
- d) there is a need to further analyze the connection, if any, between Idaho air sources and mercury levels in Idaho waters,
- e) there is a need to identify the regulatory mechanism to achieve any needed reduction in mercury levels in Idaho waters; and
- f) there needs to be further analysis to the threat to public health and environment from Idaho mercury sources.

SECOND: Dr. Randy MacMillan

DISCUSSION: Marti Calabretta asked what the rationale was for item f. Mr. Purdy replied there is a need to further analyze the threat to public health and the environment from Idaho mercury sources. He feels there is agreement on the existence of worldwide sources, but not on whether Idaho mercury sources a direct threat. Ms. Calabretta asked if a health impact from mercury would not count if globalization were the reason. Mr. Purdy confirmed the focus should be to look at mercury contamination coming from sources in Idaho.

Don Chisholm believes enough evidence exists to go forward with negotiated rulemaking at this time without knowing what the outcome of the rulemaking would be. He does not feel the results should ever be preordained. He stated he will vote against the motion.

ROLL CALL VOTE: Motion carries. 4 Ayes (Harlen, Purdy, MacMillan, Cloonan); 2 Nays (Calabretta, Chisholm); 1 Absent (Kiebert).

Dr. MacMillan asked that the minutes be prepared in detail to include the discussion and deliberation on the motions so the intent of the Board is clear.

MOTION: Nick Purdy moved the Board instruct DEQ to prepare an outline and plan to initiate negotiated rulemaking, if the data from the first motion demonstrates the need for further regulation of mercury in Idaho, at the next Board meeting.

SECOND: Dr. MacMillan

DISCUSSION: Dr. MacMillan asked if DEQ would be able to complete the assignment by the next Board meeting in October 2008. Director Hardesty asked for further explanation of the data elements the Board was requesting by October, specifically item f, and if the percentage of mercury from Idaho sources was expected. Mr. Purdy replied the intent of the motion was to ask for further analysis. Director Hardesty said she wanted to be very clear on expectations; for example, if the Board is hoping to learn whether the fish tissue listing for Silver Falls is a result of mercury from Idaho sources, DEQ would not be able to determine that by the October meeting. She said she is not aware of any science or any evaluation underway that would provide that information by October. She wants to avoid unrealistic expectations of what DEQ could bring to the Board in that timeframe.

Chairman Cloonan asked if DEQ would be able to provide enough information for the Board to evaluate whether it makes sense to move forward with negotiated rulemaking. Nick Purdy

commented that the decision DEQ brings back to the Board may be that it needs to wait another six months until more information is available.

Dr. MacMillan believes the big question is, what is the goal of the negotiated rulemaking. He feels it would be a waste of agency resources to initiate negotiated rulemaking to identify the goal; the approach proposed in the motion will allow DEQ to identify the hole in the regulatory structure and identify a path forward and end point.

Director Hardesty asked for clarification as to whether the Board was looking for science, data and information or more of an explanation of what regulations exist, what does not exist, and what gaps may exist. Chairman Cloonan said she does not believe the Board expects DEQ to generate a lot of new information or new studies; that is not realistic. She added she was unaware of any requirement that air rules and water quality rules ignore one another.

Ms. Calabretta agreed a rule should be across both media (water and air) and believes there should also be some consideration of the present status of the environment and look at both site-specific and cumulative impacts, somewhat like the TMDL process that analyzes all the sources that impact a water body.

Curt Fransen, Deputy Director, expressed concern that the proposed motion appears to be based on the presentation of data that may or may not demonstrate a need for further regulation. He pointed out that development of a plan in this short timeframe would involve some judgment and not be based just on data.

Chairman Cloonan said she is concerned with the use of the term “demonstrate” in the motion.

Nick Purdy feels the plan would not be based so much on data, but on how to proceed with negotiated rulemaking and the process that would be used. The data he referred to in the motion was the data EPA plans to release in May and the DEQ data from the Salmon Falls study. Chairman Cloonan suggested the word “data” be replaced with “information” and the word “demonstrates” be replaced with “indicates.”

Director Hardesty asked if the Board expected the information in the plan to include all the items referenced in the first motion, such as the connection between mercury in the air and mercury in fish tissue. Doug Conde said it appears there is confusion between the two motions. The reasons for denial of the petition are being mixed up with the direction being given in the second motion. He believes the Board can request DEQ to prepare a plan outlining what it would need to do to initiate negotiated rulemaking without answering all the items outlined in the motion denying the petition. Nick Purdy clarified his intent in his first motion was to delay negotiated rulemaking because of the information that would soon be available from the study EPA discussed and the DEQ Salmon Falls study. Chairman Cloonan confirmed the current proposed motion was a separate action from the first motion and the items listed in the first motion should not be coupled with the second motion. She also confirmed the data in the first motion referred to the studies from the EPA and DEQ that will be released in May and June 2008.

Dr. MacMillan asked if it was the intention of the Board to set a path toward a rule that would relate air emissions to mercury levels in fish. Don Chisholm commented the path should be to proceed with negotiated rulemaking not knowing what the final outcome will be, but to develop a plan to address the issue taking into account new data as it is developed. Dr. MacMillian said he could support development of a plan, but feels it would be premature to initiate negotiated rulemaking at this time. He suggested the motion be revised to instruct DEQ to present a plan at the next meeting setting a path forward, which may include negotiated rulemaking, and identifies a goal and end point.

Nick Purdy agreed it was his intent that DEQ's plan may or may not include moving forward with negotiated rulemaking.

Don Chisholm suggested a substitute motion be made to request DEQ to come forward with a proposed plan of negotiated rulemaking, which the Board can either accept or reject, to control mercury emissions from Idaho sources to reduce mercury contamination in fish tissue. The plan can recommend whether Idaho does or does not need negotiated rulemaking, and if so, how it should proceed. The Board can then decide whether to accept the plan and the recommendation. Ms. Calabretta said she could support such a motion.

Nick Purdy withdrew his motion.

SUBSTITUTE MOTION: Don Chisholm moved the Board direct DEQ to prepare a proposed plan of negotiated rulemaking to control mercury emissions from Idaho sources to reduce mercury contamination in fish tissue.

SECOND: Marti Calabretta

DISCUSSION: Craig Harlen said he assumed the motion would allow DEQ to come back with a plan that would gather specified data, receive input from EPA, and then proceed. Mr. Chisholm said the intent of his motion was not to tell DEQ what the plan should be or how to go about it, but just to move forward with developing a plan. If DEQ needs more time, then the Board will address the reason it needs more time.

Dr. MacMillan commented the motion should be revised to clarify that the goal is to reduce mercury contamination in fish with levels over the recommended health criteria, not all fish.

AMENDMENT: Dr. MacMillan moved the motion be amended to read: the Board direct DEQ to prepare a proposed plan of negotiated rulemaking to control mercury emissions from Idaho sources to reduce mercury contamination in fish tissue which exceeds public health standards.

ROLL CALL VOTE ON AMENDED MOTION: Motion carries. 6 Ayes (Calabretta, Chisholm, Harlen, Purdy, MacMillan, Cloonan); 0 Nays; 1 Absent (Kiebert).

**AGENDA ITEM NO. 8: UPDATE ON GROUND WATER RULE NEGOTIATED
RULEMAKING**

Barry Burnell reported four negotiated rulemaking meetings have been scheduled to evaluate the active mineral extraction exemption for the Ground Water Quality Rule. The first meeting was well attended and allowed stakeholders the opportunity to express their opinions and perspectives on the rulemaking. DEQ presented a proposal to move forward with further negotiations by deleting the majority of the previous mineral extraction section of the rules and start with a new section following the federal 40 CFR, Part 256 criteria (the RCRA criteria for non-municipal facilities that establish boundaries).

Other issues discussed at the meeting were adding monitoring requirements to the rule for compliance and the ability to tie the use of best management practices and the BMP feedback loop from the Ground Water Management Plan into the rule. This would assist in evaluating compliance.

DEQ has committed to have a draft rule out next week so stakeholders will be able to evaluate the draft rule and propose changes prior to the next meeting. Mr. Burnell feels the meeting went well and believes DEQ will be successful in working with the stakeholders to revise the Ground Water Quality Rules.

AGENDA ITEM NO. 9: CONTESTED CASE AND RULE DOCKET STATUS REPORT

Paula Wilson briefly reviewed the current contested case and rule docket status report. No new cases have been filed since the last meeting. She added that in the future any petitions for rulemaking received by DEQ will be posted in the What's New section on the Web site.

AGENDA ITEM NO. 10: LOCAL REPORTS AND ITEMS BOARD MEMBERS MAY WISH TO PRESENT

Nick Purdy asked if a summer meeting would be needed to address upcoming issues. Chairman Cloonan said unless any new contested cases are filed; the existing rules and issues will not be ready to come to the Board before the October meeting. The large number of rules, plus the contested cases, will probably require a two-day meeting in October.

The meeting adjourned at 4:00 p.m.

/s/

Dr. Joan Cloonan, Chairman

/s/

Craig Harlen, Secretary

/s/

Debra L. Cline, Management Assistant and Recorder

ACTION ITEMS

- a. Ground Water Quality Plan – does it need to be updated; is it appropriate for the Board to take action?"
- b. Update on mercury issue and fish tissue sampling and monitoring results.