



State of Idaho
DEPARTMENT OF ENVIRONMENTAL QUALITY
BOARD OF ENVIRONMENTAL QUALITY

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

MEMBERS OF THE BOARD

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LEGAL COUNSEL

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IDAHO BOARD OF ENVIRONMENTAL QUALITY

MINUTES

August 26, 2008

The Board of Environmental Quality convened on August 26, 2008, at 1 p.m. at:

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

ROLL CALL

BOARD MEMBERS PRESENT

Dr. Joan Cloonan, Chairman
Craig Harlen, Secretary (via telephone)
Donald J. Chisholm, Member
Kermit Kiebert, Member (via telephone)
Dr. John R. "Randy" MacMillan, Member
Carol Mascarenas, Member (via telephone)
Nick Purdy, Member

BOARD MEMBERS ABSENT

None

DEPARTMENT OF ENVIRONMENTAL QUALITY STAFF PRESENT

Toni Hardesty, Director
Curt Fransen, Deputy Director
Courtney Beebe, Deputy Attorney General, DEQ
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
Paula Wilson, Rules Coordinator

OTHERS PRESENT:

Dan Beck, Attorney at Law, representing Sunnyside Park Utilities
Robbin Finch, Boise City
Demi Fisher, Micron
Harriet Hensley, Deputy Attorney General, Natural Resources Division

Mona Mack, Attorney at Law, representing Neighbors for a Healthy Gold Fork
Mike McIntyre, Micron
Lynn Tominaga, Idaho Water Policy Group

- ❖ 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. April 25, 2008 meeting minutes

- **MOTION:** Don Chisholm moved the Board approve the April 25, 2008, 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, will report to the Board at the next meeting.

Chairman Cloonan welcomed new Board member, Carol Mascarenas, to the Board. Ms. Mascarenas was appointed by Governor Butch Otter to serve a term commencing August 14, 2008 through July 1, 2012. Board members are appointed with due regard to their knowledge and interest in solid waste, air quality, or water quality and to assure appropriate geographical representation of the state. Ms. Mascarenas is a civil engineer with an environmental emphasis and was appointed with regard to her knowledge and interest in solid waste. She lives in Idaho Falls and is the Safety and Health Director for the Idaho National Laboratory.

AGENDA ITEM NO. 2: DIRECTOR'S REPORT

Toni Hardesty, Director, updated the Board on the following issues:

- DEQ received approval from EPA on August 1 for the State Implementation Plan (SIP) it submitted for the Crop Residue Burning Program. This will allow DEQ to begin administering the program in Idaho on September 2, 2008.
- EPA promulgated a new ozone standard. DEQ has been watching closely to see how it will affect the Treasure Valley. Preliminary monitoring readings in July indicated ozone levels on the verge of triggering non-attainment. EPA will have one year to review the data to determine if the area is officially in nonattainment. This provides a small window of opportunity for the Treasure Valley to lower its ozone levels and avoid being declared in nonattainment. DEQ has been very active conducting outreach and education with the public and businesses about ways they can help the Treasure Valley avoid nonattainment.
- EPA has officially designated Pinehurst and Cache Valley as nonattainment areas for PM2.5.
- An agreement has been reached with the Department of Energy to resolve the cleanup of five types of waste, mostly transuranic waste, at the subsurface disposal area at INL. The cleanup is expected to result in a minimum of 7,485 cubic meters of targeted waste being shipped out of Idaho. Cleanup of any remaining waste will be coordinated through the Superfund Program. The area will be capped to protect the aquifer. DEQ will monitor the cleanup to ensure it progresses according to the agreement.
- The Coeur d'Alene Lake Management Plan public comment period closed and comments are being reviewed to determine if any changes are needed to the draft plan. The next step will be to develop a budget and seek funding in the upcoming legislative session to implement the plan.

Chairman Cloonan asked if DEQ intended to propose any legislation during the upcoming session. Director Hardesty said DEQ is considering only one piece of legislation that may move forward. It is essentially a "housekeeping" matter regarding how the Superfund site in northern Idaho is defined. The legislation has not been approved for introduction at this time.

AGENDA ITEM NO. 3: IN THE MATTER OF SECTION 401 WATER QUALITY CERTIFICATION, WETLAND FILL AND BOAT DOCKS ALONG LAKE CASCADE, CONTESTED CASE DOCKET NO. 0103-07-04, NEIGHBORS FOR A HEALTHY GOLD FORK PETITION FOR REVIEW OF PRELIMINARY ORDER – BOARD DELIBERATION TO GRANT OR DENY THE PETITION FOR REVIEW

Chairman Cloonan explained that the two petitions before the Board today are procedural issues, and at this time the Board needs only to decide whether to allow the petitions for review or not.

Doug Conde, Deputy Attorney General, testified on behalf of DEQ. He said DEQ does not oppose the petition for Board review of the hearing officer's decision. DEQ believes the Board will uphold the hearing officer's decision after it reviews the matter and does not oppose proceeding with the briefing process and, if the Board desires, oral argument.

Mona Mack, Attorney at Law, testified on behalf of the Neighbors for a Healthy Gold Fork. She said she appreciates DEQ not objecting to the Board hearing this matter. She believes there are some important issues regarding the application of the TMDL and the 401 certification process in this case, and further briefing and oral argument will be of benefit in resolving the matters.

- **MOTION:** Don Chisholm moved the Board grant the petition for review.
SECOND: Dr. McMillan
ROLL CALL VOTE: Motion carried. (Ms. Mascarenas, aye; Mr. Chisholm, aye; Mr. Harlen, aye; Mr. Kiebert, aye; Mr. Purdy, aye; Dr. MacMillan, aye; and Chairman Cloonan, aye.)

The Board set the schedule for the briefing and oral argument for the case as follows:

- Petitioner brief due September 23, 2008.
- Respondent and Intervenor briefs due October 14, 2008.
- Oral argument to be scheduled for the November 12 & 13, 2008, Board meeting. A notice of argument will be issued setting the specific time and date.

AGENDA ITEM NO. 4: ***IN THE MATTER OF SUNNYSIDE PARK UTILITIES' APPLICATION FOR SEWAGE DISPOSAL PERMIT, CONTESTED CASE DOCKET NO. 0103-07-02, SUNNYSIDE PARK UTILITIES' PETITION FOR REVIEW OF PRELIMINARY ORDER – BOARD DELIBERATION TO GRANT OR DENY THE PETITION FOR REVIEW***

Dan Beck, Attorney at Law, represents Sunnyside Park Utilities. He said this review is being requested because they feel there is a legal issue regarding the definition of “reasonable accessibility” and IDAPA provisions regarding the denial of a sewage disposal permit. He believes the hearing officer erred in his application of the meaning of reasonable accessibility and asked the Board to review the matter and reverse the hearing officer’s decision.

Courtney Beebe, Deputy Attorney General, represented DEQ in this matter. Ms. Beebe said DEQ does not object to the Petition for Review, but does support the findings of fact and conclusions of law made by the hearing officer in the preliminary order.

- **MOTION:** Don Chisholm moved the Board grant the petition for review.
SECOND: Nick Purdy
ROLL CALL VOTE: Motion carried. (Ms. Mascarenas, aye; Mr. Chisholm, aye; Mr. Harlen, aye; Mr. Kiebert, aye; Mr. Purdy, aye; Dr. MacMillan, aye; and Chairman Cloonan, aye.)

The Board set the schedule for the briefing and oral argument for the case as follows:

- Petitioner brief due September 16, 2008.
- Respondent brief due October 7, 2008.
- Oral argument to be scheduled for the November 12 & 13, 2008, Board meeting. A notice of argument will be issued setting the specific time and date.

AGENDA ITEM NO. 5: **CONTESTED CASE AND RULE DOCKET STATUS REPORT**

Paula Wilson briefly reviewed the current contested case and rule docket status report. A new contested case was filed by Micron Technology. A hearing officer will be assigned to the case this week, and the parties will be contacted to schedule a prehearing conference.

Ms. Wilson said 11 rules are set to come before the Board at its October 2008 meeting. She requested the Board schedule a meeting in February 2009 to allow the Stage 1 Vapor Recovery rule to move forward. DEQ plans to submit a request for a temporary rule to the Governor's office and, if approved, the rule will be presented to the Board for adoption as a temporary and pending rule in February 2009, with an effective date of April 1, 2009.

Dr. MacMillan asked if the October or November Board meeting agendas would include any actions on the mercury issue. Director Hardesty said it was her understanding from the motion approved by the Board at its April 2008 meeting that DEQ was to make a presentation to the Board at its October meeting with a recommendation on how it should move forward with the mercury issue.

Chairman Cloonan asked if the subsurface sewage rule has to be moved to the November Board meeting that an update on the rulemaking process be presented at the October Board meeting.

AGENDA ITEM NO. 6: LOCAL REPORTS AND ITEMS BOARD MEMBERS MAY WISH TO PRESENT

Nick Purdy discussed the recent action by Blaine County to create a water quality department. The county proposed an ordinance requiring the creation of a database of all the septic tanks in the county, their size, and when they were installed. It further requires inspection and pumping of septic tanks on a specified schedule. Mr. Purdy commented this action has caused a great deal of concern from the citizens in the area. Some people question the need for this action because there has never been a case in the region where a well was contaminated by a septic tank.

Barry Burnell said he has talked to the chairman of the Blaine County Commissioners and their deputy prosecuting attorney regarding adoption of an ordinance mandating maintenance of septic systems. The ordinance grew out of an initial effort to address complex septic systems. DEQ did not really play a role in the Blaine County ordinance; its role is in most part through the rules that address the construction of septic systems.

Chairman Cloonan asked if any law or rule would preempt counties or other local units of government from establishing rules of this kind. Mr. Burnell said he was also asked this question by the Blaine County deputy prosecuting attorney, and the matter was referred to the attorney general for investigation and response. He confirmed that a section of the Ground Water Quality Plan charges local units of government with taking steps within their jurisdiction that are necessary to protect ground water from a local perspective.

Mr. Purdy commented that coordination will be needed between the county, the health district, and the state if the ordinance moves ahead.

AGENDA ITEM NO. 7: ELECTION OF BOARD OFFICERS

Chairman Cloonan opened the floor to nominations.

- **MOTION:** Dr. Randy MacMillan nominated Craig Harlan as chairman of the Board of Environmental Quality.
- SECOND:** Nick Purdy

ROLL CALL VOTE: Motion carried. (Ms. Mascarenas, aye; Mr. Chisholm, aye; Mr. Harlen, abstain; Mr. Kiebert, aye; Mr. Purdy, aye; Dr. MacMillan, aye; and Chairman Cloonan, aye.)

➤ **MOTION:** Don Chisholm nominated Nick Purdy as vice-chairman of the Board of Environmental Quality.

SECOND: Dr. Randy MacMillan

ROLL CALL VOTE: Motion carried. (Ms. Mascarenas, aye; Mr. Chisholm, aye; Mr. Harlen, aye; Mr. Kiebert, aye; Mr. Purdy, abstain; Dr. MacMillan, aye; and Dr. Cloonan, aye.)

➤ **MOTION:** Dr. MacMillan nominated Kermit Kiebert as secretary of the Board of Environmental Quality.

SECOND: Don Chisholm

ROLL CALL VOTE: Motion carried. (Ms. Mascarenas, aye; Mr. Chisholm, aye; Mr. Harlen, aye; Mr. Kiebert, abstain; Mr. Purdy, aye; Dr. MacMillan, aye; and Dr. Cloonan, aye.)

Craig Harlen thanked Dr. Cloonan for her leadership as chair of the Board and said he was pleased to be able to follow in her footsteps.

The meeting adjourned at 2:00 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.