



State of Idaho  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
BOARD OF ENVIRONMENTAL QUALITY

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**IDAHO BOARD OF ENVIRONMENTAL QUALITY**

**MINUTES**

**February 8, 2005**

The Board of Environmental Quality convened on February 8, 2005 at 9:00 a.m. at:

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

**ROLL CALL**

**BOARD MEMBERS PRESENT**

Dr. John R. "Randy" MacMillan, Chairman  
Dr. Joan Cloonan, Vice-chairman  
Craig Harlen, Secretary (via telephone)  
Paul C. Agidius, Member  
Donald J. Chisholm, Member  
Nick Purdy, Member  
Marguerite McLaughlin, Member (joined meeting via telephone at 9:15 a.m.)

**BOARD MEMBERS ABSENT**

None

**DEPARTMENT OF ENVIRONMENTAL QUALITY STAFF PRESENT**

Toni Hardesty, Director  
Jon Sandoval, Chief of Staff  
Martin Bauer, Administrator, Air Quality Division  
Barry Burnell, Administrator, Water Quality Division  
Jess Byrne, Interagency Affairs  
Debra Cline, Management Assistant to the Board  
Darrell Early, Deputy Attorney General, DEQ  
Orville Green, Administrator, Waste & Remediation Division  
Sharon Keene, Customer Resources Team Leader  
John Lawson, Mine Waste Program Scientist  
Mike McGown, Administrator, Boise Region  
Bruce Schuld, Mine Project Coordinator  
Paula Wilson, Rules Coordinator

**OTHERS PRESENT:**

Tom Blanchard, Idaho Conservation League (ICL)  
Doug Cole, Environmental Protection Agency  
William Eddie, Advocates for the West, Attorney for ICL  
Henry Hamanishi, J. R. Simplot Co.  
Justin Hayes, Program Director, ICL  
Jack Lyman, Idaho Mining Association  
Mike Reno, Central District Health Department  
Tom Turco, Central District Health Department  
Dick Rush, Idaho Association of Commerce & Industry

- ❖ 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**

No comments were received.

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

a.       October 20, 2004

- **MOTION:**           Dr. Joan Cloonan moved the Board approve the minutes of the October 20, 2004 meeting as presented.
- SECOND:**           Don Chisholm
- VOICE VOTE:**       Motion passed. 6 ayes; 0 nays; 1 absent (McLaughlin).

b.       November 18, 2004

- **MOTION:**           Don Chisholm moved the Board approve the minutes of the November 18, 2004 meeting as presented.
- SECOND:**           Paul Agidius
- VOICE VOTE:**       Motion passed. 6 ayes; 0 nays; 1 absent (McLaughlin).

c.       Review of Action Items

**Environmental Common Sense Committee, Servicing Communities: Planning for the Future Subcommittee and Land Use Planning Act issues – Update on actions**

Jon Sandoval stated there was no action to report at this time. The Environmental Common Sense Committee will meet on February 9 and the matter is on the agenda. Mr. Sandoval will provide a report at the next Board meeting.

## Public Comment Link Added to Board Web Page

Debra Cline reported a link was created on the Board's Web page to invite feedback and public comment. Board members requested the site be added to encourage the public and stakeholders to comment on issues of concern and to receive feedback so the Board could ensure it was serving the public's needs. Don Chisholm suggested a statement be added indicating that testimony or argument regarding pending contested cases would not be accepted through the web site. Board members concurred with the suggestion and directed staff to add the language to the Board's web page.

(Marguerite McLaughlin joined the meeting via conference call.)

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

Director Toni Hardesty updated the Board on the Coeur d'Alene Management Plan, the Coeur d'Alene Basin Commission, the Use Attainability Analysis Conference, and activities to gain primacy of the NPDES Program. Funding for DEQ efforts to seek primacy of the NPDES Program was not approved in the Governor's budget. The Idaho Association of Commerce and Industry (IACI) plans to pursue legislation to seek primacy to keep the issue on the table. The legislation may or may not request funding for the effort. There is recognition that if no funding is requested, the legislation would express intent, but there would be no action taken by DEQ.

Director Hardesty reported briefly on legislation of interest to DEQ.

### **AGENDA ITEM NO. 3:            IDAHO CONSERVATION LEAGUE'S PETITION FOR INITIATION OF RULEMAKING TO AMEND THE RULES FOR ORE PROCESSING BY CYANIDATION, IDAPA 58.01.13**

William Eddie, attorney for Advocates of the West, appeared on behalf of the ICL. Justin Hayes, ICL Program Director, presented the petition and explained each of the amendments proposed in the petition. He urged the Board to support a rule amendment to change the financial assurance requirement to full-cost bonding. He quoted a document from the Montana Environmental Quality Council; "Metal Mine Bonding in Montana" (Attachment 1) that discussed problems Montana has experienced cleaning up environmental damage from mines that had inadequate bonding. Mr. Hayes discussed additional information and details provided by Warren McCullough, Chief of the Environmental Management Bureau for the Montana Department of Environmental Quality, (Attachment 2) on the extent and cost of environmental cleanups from mines with inadequate financial assurance.

The Mineral Policy Center, a national organization that tracks mine policy nationwide, estimated in its 2003 report that Idaho might have a \$210 million shortfall in its bonding. This estimate included all pertinent bonding in the state, not just DEQ, including Department of Lands and federal agency bonding.

Mr. Hayes stated ICL is requesting the proposed amendments be adopted as a temporary rule. A temporary rule is needed to protect the public health and environment. There is an urgent need to address the bonding issue because there are two mines beginning the permit process.

Darrel Early, Deputy Attorney General, explained the process DEQ must follow to establish a temporary rule beginning with approval from the Governor's office. Mr. Hayes urged DEQ to begin the process.

Paul Agidius asked if current mining operations would be grandfathered under the proposed amendment. Mr. Hayes stated he would prefer to have the amendments applied retroactively, if possible due to the tremendous amount of exposure and liability on behalf of the state due to current inadequate bonds.

Dr. Joan Cloonan asked if ICA was proposing the Board move forward with changing regulations on bonding before the legislation proposed by the Idaho Mining Association (IMA) was acted on by the Idaho Legislature. Mr. Hayes explained the IMA legislation proposes to remove the cap on bonding, and seeks to transfer the bonding authority from DEQ to the Idaho Department of Lands (IDL). ICL is very supportive of the amount of the bond in the legislation, and hopes to work with the Legislature, IMA, and others to develop good legislation that addresses a whole host of needs, many which go beyond the scope of ICL's Petition for Rulemaking and request for a temporary rule. However, if the IMA legislation passes, it will not take effect for six months. ICL fears this would not be in time to affect the two proposed mines.

Nick Purdy asked if it was possible to have negotiated temporary rulemaking. Darrell Early believed a process which would work like negotiated rulemaking could be used prior to asking the Governor's office for approval of a temporary rule. Mr. Purdy felt it made sense to use a process that would bring all the parties together to develop a rule that met everyone's needs and would be compatible with the IMA legislation.

Don Chisholm asked if the \$100,000 cap on bonding was set in statute or rule. Darrell Early stated the cap was set in the rules and there was no statutory limit. In fact, it is arguable that the current rule does not capture the intent of the Legislature because the Legislature wanted sufficient bonding to clean up a site.

Justin Hayes closed by noting the procedural rules allowed for establishing a temporary rule upon the Governor's approval and finding that it is for the protection of public health, safety or welfare.

Tom Blanchard, Bellevue, Idaho, testified in support of the ICL petition and request for a temporary rule. Mr. Blanchard is a public historian specializing in mining history. He has also worked for conservation organizations monitoring mines. He submitted written testimony (Attachment 3) and discussed the need for flexibility in the bonding process to address real costs and recoveries and the enormous liability faced by Idaho due to the current inadequate bonding requirements.

Written testimony supporting the ICL petition from Scott Christensen, Greater Yellowstone Coalition; John Schmidt, Sierra Club Northern Rockies Chapter; Bonnie Gestring, Mineral Policy Center; Donald F. Evans, ICL member and for chemical supplier to the Nevada mining industry; Bill Uhl, Atlanta resident; and Doris Helge, Atlanta resident, was distributed and reviewed by the Board. (Attachment 4.)

Jack Lyman, IMA, discussed the legislation, Senate Bill 1095, being proposed by the IMA to address bonding for ore processing by cyanidation. The legislation incorporates many of the

changes the ICL previously sought in legislative proposals in 2001 and 2002. Senate Bill 1095 would allow DEQ to retain all of its permitting authorities over the facilities where they have a primary responsibility for the water quality aspects. The financial responsibility (bonding) would be shifted under the Surface Mining Act to IDL, where all reclamation bonding is now located. This would provide consistency and a “one-stop shop” for industry, as well as a number of protections both for operators and the state. The bill would require cost bonding plus 10%.

Mr. Lyman stated the bill would be actively discussed at the Legislature and felt the ICL petition was premature. He believed Board action at this time would not be viewed favorably by a Legislature that was considering the issue. A proposed rule would not take effect for over a year until the Legislature could consider it. He did not believe sufficient justification existed to issue a temporary rule. The Legislature should make a decision on Senate Bill 1095 within six weeks. The bill mandates DEQ and IDL initiate temporary rulemaking by August 1. The statute would take effect July 1. There is a provision that would raise the financial assurance requirement to the cost plus 10% level during this one-month period and until the temporary rule is in effect.

Mr. Lyman did not support changing the bonding levels for facilities that were started under the old levels, noting that they would have to be cash bonds. He also did not support ICL’s proposed amendment to eliminate the 30-day limit on suspending the running of the time period to issue the permit. He pointed out this could result in a delay of up to one year in a project due to the limited construction season in certain areas. The clock does not start running on the time period until the Director determines the application is complete. There is no need to suspend the timeframe while additional information is collected. The IDL has operated this way for over a decade.

Marguerite McLaughlin asked if IDL had the staff to adequately respond to the demands the IMA legislation would impose. Mr. Lyman replied there was a \$100 a fee associated with the permit at DEQ. The IDL felt this was an inadequate amount, and he envisioned increasing the fee to cover costs. IDL has the resources to perform reclamation plans and their primary role in the post closure plans will be to identify the independent contractor to review the cost estimate. He did not believe it would be a huge burden and felt IDL would be able to recover most of its costs.

Don Chisholm commented that large bonding requirements could limit competition and make it impossible for all but large, wealthy companies to do business. He asked if IMA had any members who would oppose removing the bonding caps because it would price them out of the market. Mr. Lyman stated he represented large mining companies and did not have any members who were small miners. He had not discussed the issue with small mining operations, but was certain the proposed changes to bonding would put them out of the business of ore processing by cyanidation.

Chairman MacMillan asked what course of action DEQ believed would be best to resolve the issue. Director Hardesty responded it was apparent the rules needed to be updated; it is just a question of the best and most efficient method to accomplish the task given the sensitivity of timing and the proposed legislation. The legislation, if approved, will mandate a certain path for the rulemaking. If it is not approved, the scope of the rulemaking would be different. There are a number of other issues DEQ would like to look at and potentially include in the rulemaking. For example, the current \$100 application fee clearly is not adequate. Darrell Early clarified the

Governor does have the authority to approve a temporary rule that imposes a fee if he finds it is necessary to avoid immediate danger and justifies the imposition of a fee.

Director Hardesty envisioned that if not at this time, then clearly within the next couple months, DEQ will want to be in a position to begin negotiating rules either to reflect statutory changes if the legislation is approved, or to go forward with necessary rule changes. It basically comes down to a couple of month's time difference whether the process starts now or after the Legislature acts.

Justin Hayes encouraged the Board to initiate a temporary rulemaking to close any window, and to remain involved in the process that is drafting legislation affecting DEQ. He emphasized the legislation may not pass, leaving the window open for an undetermined time.

Board members deliberated the petition and discussed different options to address the issues. Members emphasized the importance that any action taken by the Board must be sensitive to the actions of the Legislature and not interfere with any decision made on the pending legislation. Chairman MacMillan observed that since all parties agreed rulemaking would need to take place as soon as possible, the most efficient action might be to initiate rulemaking to start the process, and then define the scope of the rulemaking after the Legislature acts.

Darrell Early clarified DEQ could not support the IMA legislation at this time. It sweeps in other issues which will have significant effects on the bonding question and the cyanidation program in general. DEQ agrees the cap needs to be removed, but there are other components in the bill DEQ had concerns with. DEQ and IMA are working on potential amendments to the legislation, but have not reached agreement at this point.

Dr. Cloonan suggested the Board take the petition under consideration with a condition that any action will be affected by the pending legislation, and the Board will respond to the petition as soon as the Legislature acts. Marguerite McLaughlin agreed and feared it would have a negative effect at the Legislature if the Board acted on the petition prior to a Legislative decision.

Darrell Early pointed out the rules required the Board to deny the petition or initiate rulemaking; there is no option to delay action. ICL could withdraw its petition pending legislative action. The Board could publish an open-ended, broad notice of rulemaking just to get the process started, and define the scope after the Legislature acts. The notice could also include a discussion of the pending legislation.

Craig Harlen was concerned any action by the Board at this point might confuse the matter and could slow the process and prevent speedy implementation of a higher cap. He felt it was best to deny the petition and stand ready to start rulemaking as soon as the Legislature provided guidance regarding the proper fix for the problem.

Don Chisholm commented in looking at the time frame for rulemaking and the Board meeting schedule, the most efficient process would be to give notice of rulemaking with the understanding the Legislature may define the scope of the rulemaking. He felt it was important to start the process and stand ready to comply with the decision of the Legislature if they act, and be ready to move forward if they don't. He noted if the Board did not start the process now, it would be August before it could act. If started now, a rule could be adopted at the June Board meeting.

- **MOTION:** Nick Purdy moved the Board accept the ICL Petition to Initiate Rulemaking by publishing a notice to initiate negotiated rulemaking in the Administrative Rules Bulletin on April 6, 2005.

**SECOND:** Dr. Joan Cloonan

**DISCUSSION:** Don Chisholm suggested the motion be amended to add the language “to include the issues raised by the petition and other issues germane to the issue of cyanidation.” Mr. Purdy agreed to the suggested amendment. Chairman MacMillan suggested language also be added to recognize the action of the Legislature on the pending legislation will dictate the scope of the rulemaking. Mr. Chisholm commented such language could be added to the notice of rulemaking.

Director Hardesty suggested the motion direct DEQ to develop language associated with the negotiated rulemaking that recognizes the action and intent of the Legislature will guide the scope of the rulemaking.

Darrell Early stated appropriate language could be drafted and verified it was the Board’s intent to exercise its options under IDAPA Administrative Rule 802 which allows the Board to initiate rulemaking proceedings in response to a petition and to take further comment on whether a rule should be proposed or what rule should be proposed. Such action would satisfy the Board’s obligation to rule either affirmatively or negatively on the ICL petition. It is not necessary to state that the Board is granting or denying the petition at this time.

Craig Harlen emphasized his concern that Board action at this time might inadvertently cause delays or prevent progress in resolving the problem. He felt it was a very important, looming issue that should get full vetting before the Legislature. He stressed any motion by the Board should articulate that the Board is standing ready to enact the Legislature’s will.

Don Chisholm believed it was the Board’s intent to simply get the process started so there would be a plan in place to carry out the intent of the Legislature’s actions, or in the event they did not act on the proposed legislation, to move forward with negotiated rulemaking to address the issue. Mr. Harlen agreed, but stressed the need to be sensitive to how actions might be perceived by the Legislature.

Marguerite McLaughlin felt it was important for the motion to clarify the Board was not granting the Petition in its entirety. It should not appear the Board is taking sides or deciding the issues at this point, but merely initiating rulemaking to hear both sides.

The Board directed Mr. Early to prepare draft language for consideration following the lunch break.

The Board adjourned for lunch at 12:10 p.m. MST. Marguerite McLaughlin stated she would not be able to rejoin the meeting at 1:00 p.m.

The Board meeting reconvened at 1:00 p.m. Darrell Early presented the proposed motion and language he drafted to reflect the Board’s intent to direct DEQ to initiate rulemaking that clearly reflects the Legislature’s anticipated action on the IMA proposed legislation. Nick Purdy withdrew his previous motion.

- **MOTION:** Nick Purdy moved the Board respond to the Petition by the ICL for Initiation of Rulemaking, Docket No. 0113-05-02 regarding the Rules for Ore Processing by Cyanidation and the IMA’s proposed legislation, Senate bill 1095, which if enacted will require amendments to DEQ’s Rules for Ore Processing by Cyanidation by directing DEQ pursuant to IDAPA 58.01.23.802 to initiate negotiated rulemaking proceedings and to issue a Notice of Intent to Promulgate Rules in accordance with Idaho Code § 67-5220, on the subject

matter raised by the Petition and the proposed legislation, to obtain comments whether rules should be proposed and what rules, if any, should be proposed and to address any changes to DEQ's authorities effected this legislative session with regard to ore processing by cyanidation.

**SECOND:** Dr. Joan Cloonan

**AMENDMENT:** Paul Agidius suggested the motion be amended to read, “. . . on the subject matter raised by the Petition, ~~and~~ the proposed legislation, and cyanidation . . .” This change would allow DEQ to add additional issues to the rulemaking as needed.

**SECOND ON AMENDMENT:** Dr. Joan Cloonan

**VOICE VOTE ON AMENDED MOTION:** Motion passed. 6 ayes; 0 nays; 1 absent (McLaughlin).

**AGENDA ITEM NO. 4:**            **VEHICLE INSPECTION AND MAINTENANCE IN THE TREASURE VALLEY**

Michael McGown, Administrator, DEQ Boise Region, provided a briefing and presentation (Attachment 4) on vehicle inspection and maintenance issues in the Treasure Valley. The presentation was developed in response to a request from the Joint Legislative Environmental Common Sense Committee for information on the inspection and maintenance program for vehicles in Ada County. The Committee was interested in learning if the program was still needed and if it should be changed to address new issues.

Mr. McGown explained the history of the program and its success in addressing carbon monoxide pollution problems in the valley. Once a year, car owners in Ada County are required to have their vehicles inspected and tested for carbon monoxide and hydrocarbon emissions. Cleaner burning fuels and cleaner vehicles have also reduced the problem. The program operates in Ada County only (with the exception of the city of Kuna). There has been a great deal of discussion regarding whether the program should be extended to other areas or whether a program is still necessary. Previous efforts to establish the program in Canyon County through legislation and county ordinance have failed. Mr. McGown felt any such program should be consistent throughout the Treasure Valley because it is all part of one airshed.

Carbon monoxide levels have dropped continuously since 1978 and really are not an issue at this time. Current levels are now at half of the federal health standard, even though the number of vehicles and the number of miles driven have increased dramatically. The program is still thought to have benefits by limiting hydrocarbon emissions, setting an opacity standard for diesel emissions, and reducing particulate matter emissions. The current program is required by DEQ's Carbon Monoxide Maintenance Plan. Any changes to the program would require a rewrite of that Plan and approval by EPA.

Mr. McGown discussed strategies for the future and summarized by saying it may be time to reevaluate the program. It is essentially a 25-year old program that targets a pollutant that is no longer much of a concern. After evaluation, if a program is still warranted, any new inspection and maintenance program should target the real concerns in the Treasure Valley at this time such as ozone, PM<sub>2.5</sub>, and air toxics. There are new technologies available that may be helpful and should be investigated. Cost-benefit and alternative control strategies should also be evaluated.



Barry Burnell updated the Board on actions to review the pending wastewater land application rule that was adopted by the Board. The rule was approved by the legislature as presented and will become final at the end of the session. At the Board's request, DEQ began investigations to learn if modifications are needed to make the rule more functional. They have reviewed the wastewater reuse rules from a number of different states, some of which have been in place for many years, to compare criteria and learn how other states regulate reuse.

The Class A reuse water seems to be split between uses for residential irrigation where the water is used to support a crop and is never intended to reach an aquifer, and uses that have groundwater recharge or seepage loss that can have a direct impact on ground water. There are different risks associated with these two reuse scenarios, and it seems reasonable to have more relaxed standards as far as BOD, total organic carbon, and possibly nitrogen for the residential irrigation uses.

DEQ is also reviewing other issues such as points of compliance for testing reuse wastewater for bacteria content, pilot scale testing, and aquifer time and distance to down-gradient monitor wells. These issues are being looked at more closely and compared to other states to see if modifications can be made. Any changes proposed as a result of these studies will be addressed through a negotiated rulemaking with the stakeholders.

DEQ is co-sponsoring a wastewater land application conference with an engineering firm on May 24 & 25, 2005 in Boise. This will be the first Idaho wastewater reuse conference and Board members are invited to attend.

Mr. Burnell reported there are several projects interested in using wastewater reuse. DEQ continues to work with the city of Rupert and will enter into discussions with their engineering firm to begin the permitting process. The city of Burley also has a project being considered for residential irrigation. However, there is concern because the current rules do not allow the homeowner to have control of the system. After closer review, this may be an area that can be modified if education and notification requirements are placed on the homeowners who will operate a system that is reliant on highly treated wastewater for residential irrigation. DEQ will work with the city of Burley to address their concerns.

Nick Purdy asked if DEQ planned to add more definitions to the reuse rule to clearly define issues such as recharge. Barry Burnell said DEQ staff have been asked to look at the recharge issue. Uses such as surface spreading, seepage ponds, or other unlined water features all have recharge associated with them and would be handled as recharge. A clearer definition may be provided when the Idaho Department of Water Resources (IDWR) addresses the recharge issue during this legislative session. He noted that Section 600 of DEQ's water quality standards has criteria that describes monitoring plans associated with recharge projects and defines and categorizes recharge projects. He emphasized the wastewater reuse rules apply only to recharge projects that use highly treated wastewater and not to projects that use irrigation water that does not contain wastewater.

Nick Purdy commended DEQ for reopening the issue to address the concerns of the regulated community and complimented Mr. Burnell on the thorough process he was using to address the concerns.

Don Chisholm asked how the issue of down-gradient wells would be addressed. Could a reuse project prevent down-gradient property owners from drilling a well and developing their property? He believed this was an important property rights question that should be addressed. Mr. Chisholm thought the reuse project should yield to the down-gradient property owner because they would have the higher right to drill a well. Barry Burnell stated he had directed staff to investigate the matter. It is a controversial issue and DEQ has not yet made a determination. There are two opinions on the issue: one believes that to be protective of the down-gradient users, the area should be under the control of the owner of the project to provide certainty that no wells will be drilled in the down-gradient area; the other believes that while individuals have rights to have reuse projects and rights to drill wells, the permitting and public notice process identifies the down-gradient area as a zone for dispersal and diffusion of the highly treated wastewater and that notice should be sufficient. A similar problem can arise in situations where subsurface sewage disposal systems prevent neighboring property owners from drilling a well. DEQ rules require a 100-foot separation between the drain field and a well. Mr. Chisholm supported addressing the issue upfront by requiring the owner of the reuse project to have an easement or otherwise control the property down-gradient from the project to create a buffer zone. Barry Burnell noted some developers have commented they feel the distance is too far and would create too great of an area for them to have to control. They do not think they should have to have ownership or control of the land to provide a buffer zone. Mr. Burnell said it was an issue that would require a fair amount of negotiations in the rulemaking process. DEQ plans to start storm water rulemaking in April 2005 and wastewater reuse in May 2005.

**AGENDA ITEM NO. 6:            NUTRIENT PATHOGEN STUDIES OVERVIEW**

Barry Burnell presented a brief background on the nutrient pathogen study process used by DEQ. When the Treasure Valley began experiencing rapid growth in the early 1990's, county commissioners asked DEQ to work with the Central District Health Department to address the issues and concerns of the citizens regarding the development that was occurring. They wanted a program or policy to answer questions about the impacts on ground and surface water at the outset of land development. The program developed and evolved into the Nutrient-Pathogen Guidance used by DEQ today. It describes DEQ's site evaluation requirements for individuals seeking permits to install septic systems for large soil absorption systems and community septic systems in nitrate priority areas. The document was co-authored by the district health departments, and they have their own areas of concern, typically based on shallow depth of groundwater or shallow soils over fractured bedrock. The districts use those conditions to establish their own application of the N-P Guidance document. Three of the seven district health departments have made or adopted formal policies as part of their land development program using the N-P Guidance document (Central District Health Department in Boise, Southwest District Health Department in Caldwell, and South Central District Health Department in Twin Falls).

Mr. Burnell provided an overview of the N-P Guidance and discussed how it is used as a tool to help make decisions. DEQ is currently working on updating the guidance document. They are working with a technical work group to collect information and comments and will draft a proposed revision to the document. DEQ plans to work closely with the stakeholders to provide public comment and involvement. The Attorney General's Office will also be consulted to review the process. The process is expected to be complete by the end of May 2005.

Director Hardesty briefly discussed steps being taken to ensure guidance is applied appropriately and there is an understanding and clarity between guidance and rule.

Don Chisholm supported the studies, whether as guidance or rules. He felt there was a tendency to yield to economic interests at the local level when considering development, and feared this would only cause problems in the future.

Nick Purdy stated constituents have expressed concern that the N-P studies are used inconsistently and the science and models are flawed. Barry Burnell explained the model for a Level I study does have limitations in its application when there is limited information regarding the aquifer materials. It assumes the aquifer materials are homogeneous and there are some flow paths present. It works well for alluvial aquifers and fractured rock aquifers when a fair amount of information is available. However, when there is not adequate information regarding the number of fractures and their consistency, it creates some uncertainty. To say the Level I model has flaws, is simply to recognize that it has limitations in its application. If there is not sufficient information regarding the number of fractures and their consistency, the alternative is to use the Level II study which is a much more complex, detailed study.

Mr. Purdy also received comments that N-P Studies do not take into consideration the prior use of property. For example when a developer wants to take property previously used as a feedlot and turn it into a small subdivision with ten houses, they do not get credit for the decrease in pollution. Mr. Burnell explained DEQ does look at change in land use as a mechanism to evaluate a situation. The details and data must support the claim of a reduction. A previous agricultural use does not automatically mean the pollution level will go down when the property is developed; there must be a net improvement. DEQ has an obligation to issue permits for some activities that have a potential to impact groundwater in a manner consistent with the ground water quality rules and the Groundwater Quality Act. He noted that if other nonpoint sources of pollution have contaminated an aquifer, there is an obligation by the other State agencies that regulate those sources of contamination to take corrective actions.

Director Hardesty commented in recent discussions with county commissioners, she heard concerns expressed on both sides of the issue. Some were concerned about the requirement for N-P Studies; but an equal number were concerned the studies were not required in their counties.

Barry Burnell reported a recent review by DEQ of the district health department's application and implementation of the Subsurface Sewage Program found the districts that did not have N-P studies as part of their land development program provided an inconsistent delivery of the Subsurface Sewage Program in their areas. A recommendation was made that the four health districts that do not require N-P studies adopt their own policies for land development.

**AGENDA ITEM NO. 7:                    CONTESTED CASE AND RULE DOCKET STATUS REPORT**

Paula Wilson briefly reviewed the status of pending contested cases and rule making efforts. DEQ has received approval to move forward with a temporary air quality rule to provide an extension of the June 1, 2005 deadline for Tier I Operating Permit applications by Title V deferred sources. A Board meeting may be needed in late May 2005 to consider the rule. The Board tentatively set a date of May 19, 2005.

A petition for contested case was recently received from a private citizen, Ken Jones, regarding the Simmons Sanitation application for a non-municipal solid waste facility. The petition asks for review of DEQ's approval of the application.

**AGENDA ITEM NO. 8:            LOCAL REPORTS AND ITEMS BOARD MEMBERS MAY WISH TO PRESENT**

Chairman MacMillan reported he had been contacted by a constituent regarding the DEQ triennial review. Director Hardesty reported the triennial review was still in the planning stages and no final decisions have been made on what all will be covered. Chairman MacMillan asked if there was a time limit for the process. Director Hardesty responded DEQ has an ongoing process of evaluating water quality standards and pursuing updates/rules as appropriate, so therefore is meeting the intent of the law.

Chairman MacMillan mentioned he recently heard a discussion indicating EPA was concerned with the number of criminal investigations they were having to conduct in Idaho. Director Hardesty commented she was not aware of any concern expressed by EPA either formally or informally regarding the number of criminal investigations in Idaho.

Board members discussed the location of upcoming meetings and directed staff to move forward with plans for a meeting and field trip in Northern Idaho. The Idaho Mining Association has offered to host a mine tour in the area for the Board. Craig Harlen stated there were many issues to look at in the area including the grass burning issue, the agreement with the Tribes on the Lake Management Plan, and mining issues. The trip will be set for either the June or August Board meeting. A possible field trip to the Hells Canyon Complex was also discussed.

The meeting adjourned at 2:45 p.m.

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Dr. John R. MacMillan, Chairman

/s/

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Craig Harlen, Secretary

/s/

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Debra L. Cline, Management Assistant and Recorder

## ACTION ITEMS

1. Investigate the question of whether DEQ could balance cost versus environmental concerns when making decisions on permits. (Doug Conde)

2. Update on the actions of the ECSC Servicing Communities: Planning for the Future Subcommittee and Land Use Planning Act issues. (Jon Sandoval)
3. Gather input from the stakeholders such as IACI, the ECSC, and the germane legislative committees regarding how the current contested case appeal process functions to see if there is interest or support in revising the EPHA to make contested cases record reviews and make recommendations on how to proceed. (Doug Conde)
4. Presentation reviewing the legal parameters of the guidance versus rule issue including the provisions of the APA and the Idaho Supreme Court decisions (Doug Conde & Harriet Hensley, October 20, 2004 minutes, Page 13)