



State of Idaho
DEPARTMENT OF ENVIRONMENTAL QUALITY
BOARD OF ENVIRONMENTAL QUALITY

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IDAHO BOARD OF ENVIRONMENTAL QUALITY

MINUTES

June 23, 2005

The Board of Environmental Quality convened on June 23, 2005 at 8:30 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)
Marti Calabretta, Member (via telephone)
Donald J. Chisholm, Member
Nick Purdy, Member
Marguerite McLaughlin, Member

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
Douglas Conde, Deputy Attorney General
Stephanie Ebright, Deputy Attorney General
Orville Green, Administrator, Waste & Remediation Division
Jerri Henry, Chemical Rules Manager
Bill Jerrel, Loan Program Manager
Sharon Keene, Customer Resources Team Leader
John Lawson, Mine Waste Program Scientist

Tiffany Floyd, Administrative and Drinking Water Manager, Boise Region
Mike McGown, Administrator, Boise Regional Office
Bruce Schuld, Mine Project Coordinator
Mike Simon, Compliance Analyst, Air Quality Program
Alan Stanford, Senior Water Quality Analyst
Paula Wilson, Rules Coordinator

OTHERS PRESENT:

Joe Baird, Baird
Doug Cole, Environmental Protection Agency (EPA)
Justin Hayes, Idaho Conservation League (ICL)
Jack Lyman, Idaho Mining Association (IMA)
Dick Rush, Idaho Association of Commerce & Industry (IACI)
Lynn Tominaga, Idaho Water Users Association (IWUA)
Jim Werntz, EPA
Steve West, Centra Consulting
Jane Wittmeyer, IFA

- ❖ 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. May 17, 2005 Meeting

- **MOTION:** Don Chisholm moved the Board approve the minutes of the May 17, 2005 meeting as presented.
- SECOND:** Dr. Joan Cloonan
- VOICE VOTE:** Motion carried. 7 ayes; 0 nays; 0 absent.

b. Review of Action Items

(1) Update on the actions of the ECSC Servicing Communities: Planning for the Future Subcommittee and Land Use Planning Act issues.

Jon Sandoval reported there has been no action by the committee since the last report.

(2) Contested Case Appeal Process – Should contested cases be record Reviews. Potential changes to the Environmental Protection and Health Act (EPHA).

Doug Conde reported DEQ discussed the possibility of making a presentation to IACI on the issue. No other actions have taken place at this time.

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

Director Toni Hardesty reported she and several DEQ staff attended the Idaho Association of Cities conference and made presentations on wastewater reuse, arsenic in drinking water, and the impact of recently passed legislation on cities. There was a great deal of interest in Senate bill 1220, which allows municipalities to review certain projects that DEQ used to review (storm drain extensions, sewer extensions, and water main extensions). DEQ is doing outreach to help cities respond to the change, and will follow up with a survey to determine which cities will be conducting their own reviews. Smaller cities who do not have the resources to conduct their own reviews may want DEQ to continue to conduct the reviews.

DEQ continues to work on finding ways to deal with its recent budget shortfalls. Eleven temporary employees have been released to date, and the hours of the remaining temporary employees have been reduced. Vacant positions will not be filled until some salary savings accrues, and some vacant positions may be combined with other positions instead of being filled. The shortfalls were caused by a decrease in federal dollars and grants, and no increase in state general fund dollars. It also takes higher salaries to attract replacements when positions are vacated.

Director Hardesty discussed ongoing rulemaking activities at DEQ. Barry Burnell, Administrator of the Water Quality Division, provided a status report on three different wastewater rulemakings currently taking place (Wastewater Rules, Docket No. 0116-0501; Wastewater-Land Application Permits, Docket No. 0117-0501; and Wastewater-Land Application Permits, Docket No. 0117-0502).

Chairman MacMillan asked if the budget shortfalls would affect the NPDES primacy study. Chairman Hardesty explained that no funds were allocated for the study, but DEQ remains committed to moving forward with updating the study that was done two years ago.

The Triennial Review is also moving forward. Information on the status of the review is available on the DEQ Web site. Barry Burnell reported public scoping meetings were held and the public comment period will end soon. DEQ is reviewing the comments and will then begin the prioritization process. Interest was expressed in an additional explanation of mixing zones and changing certain narrative standards to numeric standards.

Marti Calabretta felt Board members should be encouraged to attend such scoping meetings to represent their constituents and learn the concerns of the public. She asked that Board members be notified when such meetings were in their area. She asked what role the Board was expected to play in the Triennial Review process. Director Hardesty responded that DEQ plans to share the public comments with the Board and the public. During the prioritization process, DEQ will keep the Board apprised and seek its input. There have been about eight issues identified so far, and it may take a number of years to work through the process and address all the issues. Ms. Calabretta thanked the Director and reiterated her concern that Board members be aware of upcoming issues and stay involved in the public comment process.

Marti Calabretta asked if the budget shortfall would impact any specific programs. Director Hardesty explained that DEQ is making strategic decisions regarding each position that becomes vacant to ensure critical needs are met. Although not directly related to the recent budget shortfalls, two areas of concern are TMDLs and plan and specification review. DEQ lost five

TMDL writers during the past year. This position is not easily replaced and it is difficult to find qualified personnel. In the area of Plan and specification review, there is a general problem of not having enough resources. DEQ also continues to lose engineers and struggles to fill the vacancies due to the competition of salaries in the private sector. The TMDL schedule has slipped a little, but is not expected to require formal action.

Ms. Calabretta asked what personnel guidelines were being used regarding layoffs and consolidation of positions. Director Hardesty stressed that all employees who had been laid off or whose hours were reduced were temporary employees. Reassignment and consolidation of duties are being conducted within the confines of the personnel system.

AGENDA ITEMS NO. 3, 4, 5, & 6: FY2006 STATE WASTEWATER LOAN PRIORITY LIST; FY2006 STATE WASTEWATER PLANNING GRANT PRIORITY LIST; FY2006 STATE DRINKING WATER LOAN PRIORITY LIST; AND FY2006 STATE DRINKING WATER PLANNING GRANT PRIORITY LIST

Alan Stanford, DEQ Senior Water Quality Analyst, presented four priority lists for the Board's review and approval. He reviewed the process used to identify and rank the priority of the projects. The engineers in the DEQ regional offices who are familiar with the water systems use a standard form to rate the need for the project based on public health concerns.

The DEQ Loan Program has increased the scope of its public outreach efforts. The public comments are considered and final changes are made to the list as needed. All public comments were provided to the Board. Mr. Stanford noted that no comments were received after the final draft lists were sent to the Board.

Don Chisholm asked if projects were disqualified from receiving a grant if they began their own planning process prior to receiving approval for a DEQ grant. Mr. Stanford confirmed that projects could not receive a grant if they initiated the planning process prior DEQ approval. DEQ must review and approve the planning process to ensure it meets the requirements set out for all applicants. DEQ makes every attempt to make this clear on all information given to consulting engineers and on the Web site.

Director Toni Hardesty stated the funding for the Loan Program dropped this year and allows DEQ to fund only about half of the qualified loans and grants. DEQ sent letters seeking support to legislators to let them know about the urgent need. Idaho has an aging infrastructure with a growing list of needs and shrinking funding.

Alan Stanford emphasized the importance and value of having a grant program to help public systems get started with the planning process. The Loan Program has never had a single default on a loan since it began in 1989.

➤ **MOTION:** Don Chisholm moved the Board approve the FY2006 State Wastewater Loan Priority List, the FY2006 State Wastewater Planning Grant Priority List, the FY2006 State Drinking Water Loan Priority List, and the FY2006 State Drinking Water Planning Grant Priority List.

SECOND: Nick Purdy

ROLL CALL VOTE: Ms. Calabretta, aye; Mr. Chisholm, aye; Dr. Cloonan, aye; Mr. Harlen, aye; Ms. McLaughlin, aye; Mr. Purdy, aye; and Chairman MacMillan, aye.

Alan Stanford announced that he would be retiring soon after 30 years of state service. He enjoyed working with the Board and expressed appreciation for the assistance Paula Wilson, DEQ Rules Coordinator, supplied to keep rulemaking efforts organized and make his job easier. He acknowledged Director Toni Hardesty for her support. Chairman MacMillan thanked Mr. Stanford for his many years of excellent service and for making the Board's job easier.

AGENDA ITEM NO. 7: RULES FOR ORE PROCESSING BY CYANIDATION, DOCKET NO. 58-0113-0501 (TEMPORARY RULE) (RESPONSE TO SB1169)

Orville Green, Administrator, DEQ Waste Management and Remediation Division, explained this docket is being presented as a temporary rule in response to Senate bill 1169. He introduced John Lawson, DEQ Mining Scientist, to present the rule and Stephanie Ebright, Deputy Attorney General, legal counsel for this rulemaking. He also acknowledged Rob Hanson, Mine Waste Program Manager, and Bruce Schuld, Mine Project Coordinator, who were present to respond to questions as needed.

John Lawson reviewed the extensive negotiated rulemaking process and public outreach used to develop the rules. (Attachment 1, SB1169 Negotiated Rule Making Update, dated 6/23/05.) DEQ coordinated with the Idaho Department of Lands (IDL) during the rulemaking to eliminate redundancy and facilitate the permitting process. This rulemaking amends Idaho Code § 39-118A and the Surface Mining Act, Chapter 15, Title 47, Idaho Code with respect to bonding, closure plans, and time frames for rejecting or approving permits for ore processing facilities using cyanide. Senate bill 1169 requires DEQ and IDL to promulgate this temporary rule by August 1, 2005. Governor Kempthorne has approved temporary adoption of this rule.

In summary, the rule will change the bonding amount to operate a cyanidation facility from a \$100,000 cap to a \$5 million cap, with a provision for total cost bonding if approved by the Idaho Land Board. The bonding provisions will be transferred from DEQ to IDL; however, this will not limit DEQ's authority to permit under the Ore Processing by Cyanidation rules. The rule defines permanent closure and allows DEQ to draft specific plans to close facilities that use cyanidation. There is also a provision to limit the permitting time frames to 180 days.

If adopted, the temporary rule will go into effect on July 1, 2005. The current rule exempts two mining operations in Idaho; the Bear Track Mine and the Grouse Creek Mine. At this time, the only mine the temporary rule will affect is the proposed Atlanta Gold Mine. The temporary rule addresses only the requirements of Senate bill 1169. As soon as negotiations were complete on the temporary rule, DEQ began negotiated rulemaking on a new proposed rule to address needed changes to the provisions in the Rules for Ore Processing by Cyanidation not addressed in the temporary rule.

Mr. Lawson briefly described the issues that will be addressed in the upcoming proposed rule, including water quality protection and fees for processing permits. DEQ plans to bring the proposed rule to the Board and the Legislature next year.

Dr. Joan Cloonan noted some minor changes needed for clarity in the grammar of the definitions. She asked how best management practices (BMPs) would be identified and updated. John

Lawson explained the rules were written broadly so whatever BMPs are applicable to a situation can be used. They can be drawn from a number of approved BMPs from different agencies including the Idaho Forest Practices Act, DEQ Rules for Sewage Disposal, Solid Waste Management, Stream Alterations, Spokane Valley Rathdrum Prairie Rules for Exploration Surface Mining, Dredge and Placer mining, and Dairy Waste. As new practices come along, they are brought on line. The BMPs are identified in the State Water Quality Management Plan by broad category as opposed to being very specific.

Nick Purdy asked how bonding would be handled when a facility was sold. Mr. Lawson replied this matter was transferred to the IDL, but assumed a new owner would have to qualify in the same manner as a previous owner.

Marti Calabretta commented she was comfortable with the temporary rule as presented, but hoped before the proposed rule is adopted, IDL would make a presentation to the Board so it could fully understand the way the two sets of rules interact.

Jack Lyman, Idaho Mining Association (IMA), acknowledged the work DEQ has done on this rulemaking. He stated in 16 years of working with the negotiated rulemaking process, he has never participated in a process as organized, efficient, and productive as this rulemaking. He recognized Director Hardesty, John Lawson and Bruce Schuld for their leadership and Paula Wilson and Stephanie Ebright for their organization and legal oversight.

He discussed the issue of BMPs, noting that “best management practice” is a term defined in statute. During rulemaking, IMA insisted that anything defined in statute be defined in the temporary rule the way the legislature defined it. In some cases, terms have been further defined or modified in an adopted rule approved by the legislature. In those cases, IMA will accept those definitions. IMA continues to negotiate with IDL on its temporary rulemaking and will comment before the Land Board.

Mr. Lyman emphasized the temporary rule should narrowly focus on only the changes necessitated by Senate Bill 1169 because the legislature never reviews temporary rules. DEQ has embraced this concept and it is not an issue. IMA may present other issues during the proposed rulemaking.

IMA generally supports the supplemental changes presented to the Board. He expressed appreciation for DEQ’s willingness to revisit the temporary rule at the initial meeting for the negotiated rulemaking on the proposed rule, even though it (the temporary rule) had already been distributed to the Board. Continuing concerns were expressed by the IMA membership, and those concerns are addressed in the supplemental changes; however, three issues remain.

Mr. Lyman requested the Board adopt the temporary rule as presented by DEQ with the following changes in three definitions (see Attachment 2 for more detail):

- Process Waters – Any liquids that contain, or once contained, cyanide which intentionally or unintentionally enter into any portion of the cyanidation process.
- Material Stabilization – Managing or treating spent ore, tailings or other solids and/or sludges resulting from the cyanidation process to control water or other applied solutions from migrating through the material in a way that will prevent the transportation of contaminants associated with the cyanidation facility to ensure that all discharges comply with all applicable standards and criteria.

- Water Balance – An inventory that accounts for all potential sources of contained process waters at a cyanidation facility. The water balance is used to both ensure that all such waters can be contained as engineered and designed within a factor of safety as determined in the permanent closure plan and to estimate volumes to be treated during the implementation of the permanent closure plan.

IMA is concerned the current definition of process waters expands the concept beyond what the legislature intended and what the legislative language states. IMA believes the intent is that process water contains or once contained cyanide. The DEQ definition states these liquids may contain cyanide. Mr. Lyman asserted it is a statutory requirement that this definition be constrained to those liquids that contain cyanide. The DEQ proposal then further expands it to other minerals and meteoric water.

Jack Lyman explained why IMA requested the change in the definition of “material stabilization” to read control water, instead of minimize water. IMA believes the word control is more appropriate because there are some instances when you don’t want to prevent water in material stabilization because the water is essential to the stabilization. It is important to control the water so it performs its function and does not release pollutants into the environment. The word minimize seems to imply you would continue to ratchet it down to whatever extent you could.

Mr. Lyman stated some IMA members are concerned the language in the DEQ definition of “water balance” seems to imply a very high level of oversight into their internal processes. While it is important for DEQ to review and be knowledgeable, IMA believes the current definition is more intrusive than is appropriate. The IMA believes their proposed definition is more in keeping with what the legislature intended for the DEQ statutory responsibility for oversight.

Paula Wilson discussed the rulemaking process regarding temporary and proposed rules. This temporary rule will also go out as a proposed rule for public comment. It may be changed as a result of those comments. In addition, the other proposed rule that is now in negotiated rulemaking, will also go out for public comment. Both rules will be brought to the Board in November.

Justin Hayes, Idaho Conservation League (ICL), also complimented DEQ staff at all levels for the work they have done on this very intensive negotiated rulemaking. He emphasized the importance of DEQ and IDL continuing to work closely through the remaining rulemaking efforts. It is critical that DEQ and IDL continue a strong working relationship and a strong mutual understanding of how the rules work as these changes move forward and are put in place.

Mr. Hayes encouraged the Board not to make any changes at this point because of the importance of coordinating the DEQ rules with the IDL rules. He feared that even grammatical changes could cause a problem. He suggested any changes be given to DEQ staff for consideration in the proposed rule. ICL supported IMA’s suggested change from the word minimize to control in the definition of material stabilization, but strongly opposed the suggested changes to the definition of water balance because they feel it undermines the long-term protective nature the water balance is intended to ensure.

Mr. Hayes also commented on the importance on raising the fees to provide adequate funding for the program. The fee issue will be addressed in the proposed rule. The current \$100 processing fee is seriously inadequate. DEQ recently spent countless hours reviewing an application for a small facility on Blacks Creek. The cost to DEQ to process the application was over \$35,000. The proposed rule currently asks for an increase to \$20,000. ICL urged the Board to ask for a full-cost fee for processing the application. This would ensure a facility is not over charged or under charged, and DEQ will not be put in the position of having to take money from other programs or having inadequate staff or resources to process these complicated, long-term permits. Mr. Hayes suggested the Board provide guidance to DEQ regarding the fee issue so that it is not set at a specific number, but at full-cost or a rational percentage of the cost.

Don Chisholm asked about IDL's position on the fee issue. Mr. Hayes believed at this point, the IDL staff is recommending the fee be set at full cost. Mr. Chisholm commented that a rule which would give a state agency a blank check to determine its fee would not be acceptable.

Mr. Hayes further discussed the reasons ICL did not support the IMA proposal to change the definition of water balance. Marti Calabretta asked if ICL believed the main difference between the ICL and IMA definition of water balance was related to looking at it as an active process versus an issue of long-term closure implications. Mr. Hayes responded that while that is a key part, another important issue is the process waters. Many of the processes that take place at a cyanidation facility mobilize other pollutants through mechanisms other than the cyanidation process. A process may be used that does not include cyanide, but still mobilizes pollutants such as zinc, cadmium, and mercury. These elements can become toxic when moved into surface or ground water through process waters. Therefore, the definition of process waters needs to be inclusive enough to capture these other pollutants. People tend to focus only on cyanide, but it is very important to consider the other components in the process that can create a risk for the environment and public health.

Marti Calabretta asked Doug Conde, Deputy Attorney General, to comment on whether it was within the scope of the legislation to deal with other hazardous minerals and materials. Mr. Conde advised that while he was not involved in this rulemaking, his review of the matter indicated that if these definitions are used in the permanent closure plan requirements or in the permanent closure report, it is clearly within the scope of the legislation. The legislation directs DEQ to adopt a temporary rule to reflect the closure plan requirements.

Stephanie Ebright added that Senate bill 1169 amended not only Idaho Code § 39-118(e), the statute that governs DEQ's review of these ore processing facilities; but also amends the Surface and Mining Act. So IDL, as well as DEQ, now has authority to review and approve permanent closure plans. The temporary rulemaking was designed to create a rule that would allow a facility to submit one permanent closure plan to be submitted to both agencies with a similar review process. The definitions were used in the sections dealing with permanent closure and are within the scope of the temporary rule.

Jack Lyman stated he did not dispute DEQ's statutory authority to address the kinds of concerns expressed by Mr. Hayes regarding other pollutants, but did not think they should be addressed under the Rules for Ore Processing by Cyanidation. He emphasized again the importance of a narrow focus in the temporary rule because it will not go before the legislature. He suggested the Board look closely at the wording in the statute as it relates to a temporary rule. He requested

the Board be consistent with the specific terms in the statute in the temporary rule and defer all other issues to the proposed rule.

John Lawson pointed out the rule as presented to the Board was negotiated in good faith with all parties involved in the rulemaking, and it was agreed that it met the Administrative Procedures Act for Senate bill 1169. He was comfortable the rule met legal requirements, and noted the title of the rule is Ore Processing by Cyanidation. It does not state it is limited to cyanide; only that cyanidation is the process used to process ore.

Mr. Lawson responded to IMA's concerns and further explained the need to leave the definitions as presented. He stated definitions should be consistent and felt the IMA proposals did not have the broad definition DEQ feels is important for management of solutions relative to the cyanidation process. DEQ does not object to the change from the word minimize to control in the definition of material stabilization. DEQ originally suggested control, but it was changed to minimize because one of the stakeholders was concerned that control would not allow for a wet closure of a tailings facility.

Mr. Lawson stated DEQ did not support the suggested change to the definition of water balance. He assured it was not DEQ's intent to be intrusive and control the activities of facilities on a daily basis. The intent is to provide operators with a tool they can use to manage solutions on a day-by-day basis. He explained the most common problems in cyanidation processes, especially heapage processes, are water balance problems. Water balance is very important due to the difficulty of accurately calculating the impact of a number of potential sources (ground water, rain, pond containment, snow, etc.). The balancing process provides a means to calculate these problems that can cause catastrophic failures.

Craig Harlen asked what language in the definition of water balance proposed by IMA did not address long term and extraneous sources discussed by Mr. Hayes and Mr. Lawson. Mr. Hayes responded there were two parts; if you accept the IMA's curtailment of the definition of process water, you end up with process water that only contained or once contained cyanide. If you accept the IMA definition of water balance, the truncated definition of process water becomes critical. It is important to look at how the definitions relate to each other; not just as individual definitions.

Mr. Lawson agreed with the comments and further explained the importance of addressing all potential sources of water, not just contained water. The IMA proposal would not provide the ability to react to large, unpredicted events such as snow followed by rain. We have no control over these type of events unless we plan for a certain type of buffer in our calculations. Mr. Harlen felt the IMA language stating "all potential sources of contained process water" addressed such situations. He stated the long-term management plan for a surface pond must have room for a 100-year rain event. Mr. Hayes emphasized the IMA proposal would address only contained process water "contained" would not address all potential sources of water because it is not just ponds that are affected. A lot of water is introduced to a site that does not go to the pond; for example uncontained water that enters a site through a spring or rainfall. He asserted the IMA proposal was too narrowly limiting on contained water and process water that only contains or once contained cyanide. Those are not long-term scenarios. Water can enter the site by inundating the heap, tailings piles, or other long-term storage components of the facility that contain other solutions or other pollutants such as zinc, cadmium, or mercury that are not part of the pond system.

John Lawson felt the key was the word was “contained.” He wondered whether Mr. Harlen was assuming that components such as a heap leach pad were considered contained sources. Mr. Harlen reiterated his belief that the IMA language accounts for all potential sources of contained process water.

Jack Lyman stated IMA would not object to striking the word contained in the first line of the definition of water balance so it would read, “An inventory that accounts for all potential sources of process waters . . .” He pointed out the mining industry has been operating under these rules since 1988 without these new definitions.

Doug Conde explained the definition of “permanent closure plan” recently enacted by the Idaho Legislature includes both treating and disposing of cyanide containing material; and it is supposed to be a description of the procedure, methods, and schedule that will be implemented to meet the intent and purpose of the chapter in controlling and monitoring discharges and potential discharges for a reasonable period of time. This is not limited to cyanide containing material. Mr. Conde advised that clearly, the permanent closure plans were intended to deal with more than just cyanide containing materials. They are intended to control discharges from the facilities of other pollutants.

Steve West, Centra Consulting, testified on behalf of Hecla Mining Company. Mr. West echoed Mr. Lyman's comments regarding the rulemaking process and the professional manner in which DEQ staff conducted the proceedings. Hecla strongly supports the changes to the three definitions proposed by IMA. He urged the Board not to expand the scope of the intent of Senate bill 1169 for the temporary rule. There will be adequate time for thoughtful discussion of these issues during the proposed rulemaking. He encouraged the Board to consider the IMA alternatives for all three definitions as being the most reflective of the intent and what is most explicatively needed to implement Senate bill 1169.

Nick Purdy was uncomfortable changing the rule at this point after it has gone through the negotiated rulemaking process, where at one time there was agreement on the rule. Although he did not specifically have a problem with the proposed changes, he felt the most appropriate place to make the changes was in the rulemaking process for the proposed rule. He recommended the Board not make any changes at this time.

Steve West believed this was exactly how the negotiated rulemaking, as opposed to consensus rulemaking, process was designed to work. The parties negotiate issues to the best extent possible, and then defer to the wisdom of the Board on the issues where consensus cannot be reached. There must be a mechanism to resolve those differences, and clearly the Board is the appropriate entity.

Don Chisholm stated while he was sensitive to the concerns that a temporary rule is not reviewed by the legislature, he felt that when weighed against the coordination problems and the short deadline for DEQ and IDL to adopt coordinated rules, the best approach would be to adopt the temporary rule as presented. It will not have an impact of great duration, and the issues can be addressed in the proposed rule that will go before the legislature.

- **MOTION:** Don Chisholm moved the Board adopt, as temporary rules, the Rules for Ore Processing by Cyanidation, as presented under Docket No. 58-0113-0501, with an effective date of July 13, 2005.

SECOND: Marti Calabretta

DISCUSSION: Joan Cloonan asked if two separate rules (temporary and proposed) would come before the Board in October. Paula Wilson confirmed that two separate rule dockets would be presented to the Board at its October meeting. Once the temporary rule is adopted, the APA requires it to immediately go through the proposed rule process. It may be changed as a result of public comment. In the meantime, the other proposed rule will be moving forward. After both rules are adopted by the Board and the Legislature and codified, the two rules will be blended.

Jack Lyman questioned if the motion was to adopt the rule as it was originally submitted to the Board two weeks ago, or with the supplemental changes DEQ staff sent to the Board two days ago.

AMENDMENT: Don Chisholm amended the motion to clarify the motion was to adopt the rule with the negotiated supplemental changes presented to the Board by DEQ two days ago.

Bruce Schuld said DEQ had proposed to use the temporary rule as a basis to develop the proposed rule. Now seeing the disagreement on the language in the definitions, he suggested DEQ set aside that assumption and work with the parties to reconcile the disagreements. The Board may see some changes in the next proposed rule. He felt it was important to the resolve the issue before the rules go to the legislature

Marti Calabretta observed the Board may ultimately have to make the decision regarding process water and water balance. She believed the Board always had the right to move past what the negotiated rulemaking was able to achieve. It is to be expected that parties may not be able to reach agreement on all issues, and it will have to be resolved by a higher party. She asked that such matters be brought to the Board with a thoughtful analysis of the issues and adequate time for review. She added she was comfortable with moving forward with the language at this time.

Marguerite McLaughlin said she appreciated Mr. Schuld's comments and hoped the negotiated rulemaking would be able to find alternatives to resolve the differences before the rule went before the legislature.

Dr. Joan Cloonan pointed out that a lot of issues are addressed in definitions as opposed to in the rule itself. This can be difficult and can leave a lot of room for interpretation. When there is room for interpretation, it should be interpreted in the direction consistent with the legislation.

ROLL CALL VOTE ON AMENDED MOTION: Ms. Calabretta, aye; Mr. Chisholm, aye; Dr. Cloonan, aye; Mr. Harlen, aye; Ms. McLaughlin, aye; Mr. Purdy, aye; and Chairman. MacMillan, aye. Motion carried.

The Board had a working luncheon with the Drinking Water Advisory Committee, where they heard an informal presentation on the new arsenic standard.

Craig Harlen left the meeting at 12:00 p.m.

Jerri Henry, DEQ Drinking Water Chemical Rules Coordinator, updated the Board on the implementation of the new, lower arsenic standard and the steps DEQ is taking to help water systems gain compliance. She explained Idaho's compliance agreement schedules (CASs). Idaho is offering these consent order like documents for systems in lieu of "exemptions" offered by EPA. The exemption process was troublesome for both the water systems and the DEQ to process and administer. The water systems are pleased to be working with DEQ on the CASs.

Lynn Tominaga, Drinking Water Advisory Group member, discussed the financial impact on small communities of having to treat water to meet the new standard.

Lance Nielsen, Drinking Water Program Manager, explained the extensive public outreach and education conducted by DEQ, and the different funding resources available for assistance. Barry Burnell, Administrator, Water Quality Division, added that information on funding resources was provided to all entities in the state that were affected by the rule change.

AGENDA ITEM NO. 8: CONTESTED CASE AND RULE DOCKET STATUS REPORT

Paula Wilson briefly reviewed the status of pending contested cases and rulemaking efforts. She noted the number of contested cases is the lowest it has ever been. There could be as many as 11 dockets presented to the Board at its October 2005 meeting, and eight in November 2005.

AGENDA ITEM NO. 9: FEDERAL AIR RULES FOR RESERVATIONS – UPDATE ON NEW RULES

Jim Wertz, Director, EPA Idaho Operations Office, provided a presentation (Attachment 3) on the new Federal Air Rules for Reservations (FARR). The purpose of the rules is to create federally enforceable air quality regulations on 39 Indian reservations in the Northwest (four in Idaho) to protect the public health and environment. Prior to these rules, the reservations did not have air quality regulations in place because states cannot regulate on reservations. The rules became effective on June 7, 2005. EPA is currently conducting public outreach for the rules.

Doug Cole, Air Coordinator for EPA in Idaho, explained the rules were promulgated due to concerns from tribal governments because there were no regulations in place and complaints from tribal members and residents that live on reservations. EPA worked with the tribes to identify the issues of concern. The main issue of concern was particulate matter in one form or another, so the rules are primarily structured to address particulate matter. EPA also looked at existing rules off the reservations to develop balanced rules similar to what is in place in the states surrounding the reservations.

Marguerite McLaughlin stated she had received many calls from constituents who were confused and concerned about whom the new rules would affect and how they would interact with the existing city and county rules for areas within reservation lands. Marti Calabretta commented she had received similar calls from her constituents. Doug Cole explained the regulatory gap that existed before FARR. When EPA approved the delegation of the Clean Air Act to the State of Idaho, it did not extend into the tribal lands. EPA will coordinate the FARR rules with the city and county rules in the same manner that DEQ coordinates its rules with the city and county rules. EPA plans to work with these other entities during implementation of FARR.

Board members observed the relationship between tribal, state and federal law seemed very complex and asked for additional briefing on the matter.

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

Dr. Joan Cloonan noted the groundbreaking for the Boise WaterShed would take place on June 25, 2005. The WaterShed is located at the West Boise Treatment Plant and is Boise's new environmental education center. It is designed to promote water stewardship by teaching people of all ages how to protect and conserve water for future generations.

Nick Purdy reported he has been working on a committee for a well head protection ordinance in Blaine County. Two DEQ staff from the Twin Falls Region Office are also involved in the effort, and their participation has been very valuable. Their expertise and knowledge have raised the level of respect in the local community for DEQ. He discussed the positive impact of having DEQ staff take part in such local efforts and encouraged such involvement.

Chairman MacMillan distributed a draft document, "Guiding Principles for Addressing Resource Limitations" (Attachment 4) that he, Director Hardesty, and Jon Sandoval developed to provide guidance in addressing the budget shortfall DEQ is experiencing. The draft is intended as a starting point for discussions to help Board members determine which activities and meetings are appropriate and valuable and to set a clear path for authorization, budgeting, and reimbursing such expenses.

Director Hardesty emphasized these guiding principles are meant as principles in concept and are not intended as directives. Director Hardesty and DEQ recognize the value of the Board and want members to be comfortable in their job and get the training and expertise needed to handle the complicated and diverse issues they must address. It also formalizes and clarifies DEQ's belief that it is appropriate for Board members to attend functions organized by other entities in their geographical areas to further their information and understanding of local issues.

Don Chisholm thought it would be helpful for the Board to know the past expense levels to set an expectation and budget to control expenses. Director Hardesty thought that was appropriate, and noted that the main budget shortage at this time is personnel dollars.

Marti Calabretta agreed it would be helpful to have a budget for the Board. She suggested the Board review procedures used by other state Boards to learn how financial and reimbursement issues, public outreach, and advocacy are addressed. State boards vary on the amount of outreach they do to the local community and how much they advocate for budgets, policies, and programs. As the Board ends its fifth year, the timing seems right to review its performance and function and plan for the next five years. The Board should think about what else it may need to be doing and determine how it can best address the needs of DEQ and the public it serves.

Ms. Calabretta felt it was important the Board not do anything to limit its potential influence on behalf of DEQ and its mission by limiting access to constituents. She supported having meetings throughout the state, as well as having meetings at times when the Board is not just dealing with rules, so it can learn and prepare for other issues and rules that may be coming up.

Chairman MacMillan added it was important to consider the statutory obligations of the Board and whether it is appropriate to expand from those responsibilities. The Board will discuss the matter further at future meetings as the agenda permits.

Jon Sandoval discussed the variety of valuable information on the DEQ Web site regarding upcoming public meetings, opportunities for comment on rulemaking, and other DEQ activities. He encouraged Board members to check the Web site regularly to stay involved and invited their suggestions on the Web site to make sure it is a valuable tool. Dr. Joan Cloonan commented the news releases sent to Board members were also helpful in staying abreast of DEQ activities.

The meeting adjourned at 3:00 p.m.

/s/

Dr. John R. MacMillan, Chairman

/s/

Craig Harlen, Secretary

/s/

Debra L. Cline, Management Assistant and Recorder

ACTION ITEMS

1. Update on the actions of the ECSC Servicing Communities: Planning for the Future Subcommittee and Land Use Planning Act issues. (Jon Sandoval)