



State of Idaho
DEPARTMENT OF ENVIRONMENTAL QUALITY
BOARD OF ENVIRONMENTAL QUALITY

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

Dirk Kempthorne, Governor
Toni Hardesty, Director

MEMBERS OF THE BOARD

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

Dr. Joan Cloonan
Vice-chairman
P.O. Box 170315
Boise, ID 83717-0315

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

Marti Calabretta
P.O. Box 784
Osburn, ID 83849

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

Marguerite McLaughlin
704 Floyd Avenue
Orofino, ID 83544

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

LEGAL COUNSEL

Douglas M. Conde
Harriet A. Hensley

MANAGEMENT ASSISTANT

Debra L. Cline
(208) 373-0465

IDAHO BOARD OF ENVIRONMENTAL QUALITY

MINUTES
April 25, 2006

The Board of Environmental Quality convened on April 25, 2006 at 8:35 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
Donald J. Chisholm, Member
Nick Purdy, Member (joined meeting at 8:45 a.m.)

BOARD MEMBERS ABSENT

Marguerite McLaughlin, Member

DEPARTMENT OF ENVIRONMENTAL QUALITY STAFF PRESENT

Toni Hardesty, Director
Jon Sandoval, Chief of Staff
Martin Bauer, Administrator, Air Quality Division
Garret Baxter, Deputy Attorney General
Barry Burnell, Administrator, Water Quality Division
Jess Byrne, Interagency Affairs
Debra Cline, Management Assistant to the Board
Mike DuBois, Air Quality Analyst
Mike Edwards, SIP & Maintenance Plan Coordinator
Don Essig, Water Quality Standards
Ed Hagen, Lead Ground Water Hydrogeologist
Phyllis Heitman, Rules Coordinator, Air Quality Division
Jerri Henry, Drinking Water Compliance & Enforcement Lead
Dave Hovland, Ground Water Program Manager
Lisa Kronberg, Deputy Attorney General
Bruce Louks, Monitoring, Modeling & Emission Inventory Manager
Johnna Sandow, Water Quality Standards Analyst
Mike Simon, Stationary Source Program Manager, Air Quality Division
Paula Wilson, Rules Coordinator

OTHERS PRESENT:

Bill Eddie, Advocates for the West
Senator Bob Geddes, President Pro Tem, Idaho State Senate
Henry Hamanishi, J. R. Simplot Company
Ray Houston, Legislative Services
Linda Jones, Holland & Hart
Linda Lemmon, Idaho Aquaculture Association
Jack Lyman, Idaho Mining Association
Gary McRae, EPA
Chris Mebane, NOAA/USGS
Ken Miller Northwest Energy Coalition
Pat Nair, EPA
Suzanne Schaefer, SBS Associates
Courtney Washburn, Idaho Conservation League
Jim Werntz, EPA
Jane Wittmeyer, Intermountain Forest Association

- ❖ 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: RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO,
DOCKET NO. 58-0101-0502 (AMENDMENT TO TEMPORARY RULE)**

Martin Bauer, Administrator, DEQ Air Quality Division, presented a request to amend the temporary rule adopted by the Board in February 2006. The rule requires dairy farms above a specified number of cows or animal units to implement industry best management practices to control ammonia emissions through a permit by rule. The amendment is needed to provide an exemption from paying the permit by rule registration fee. Mr. Bauer explained DEQ will incur minimal costs and staff time. The Department of Agriculture will do most of the work and oversight in conjunction with its other responsibilities associated with dairies. The estimated workload does not justify a fee.

DEQ intends to publish the proposed rule in June 2006, and plans to incorporate the same text as the temporary rule adopted in February along with this amendment.

- **MOTION:** Dr. Joan Cloonan moved the Board adopt the amendment to the temporary rule, as presented under Docket No. 58-0101-0502, with the amendment becoming effective July 1, 2006.
SECOND: Don Chisholm
VOICE VOTE: Motion passed. 5 ayes; 0 nays; 2 absent (Purdy, McLaughlin).

Chairman MacMillan announced the remainder of the day would be an informal workshop where Board members will receive educational information on a number of issues of general interest.

UPDATE ON REGIONAL HAZE RULE

Mike Edwards, DEQ State Implementation Plan Coordinator, provided an overview of the issues involved in the Regional Haze SIP Rulemaking (Attachment 1) including:

- Introduction and overview of the Western Regional Air Partnership (WRAP).
- Visibility in Idaho Class I Areas – where we are today.
- Update on Negotiated Rulemaking – Regional Haze SIP needs.
- Conceptual model for selecting additional control measures.

This process began with the 1977 federal Clean Air Act Amendments, Section 169A, which set a national visibility goal for the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I federal areas. There are 156 Class I areas including six in Idaho: the Sawtooths, Craters of the Moon, Yellowstone, Hells Canyon, and the Selway-Bitterroot Wilderness. The goal is to attain natural visibility by 2064.

BEST MANAGEMENT PRACTICES FOR AMMONIA RULE

Bruce Louks, Manager, DEQ Air Quality Monitoring, Modeling, and Emission Inventory section, presented an overview of the new Ammonia Emissions and Best Management Practices for Idaho's Dairy Permit by Rule (Attachment 2). He explained the rules were initiated as the result of a lawsuit against a dairy by an environmental group.

Mr. Louks discussed the extensive negotiated rulemaking process, the best management practices (BMPs) contained in the rule, and how compliance will be measured. The rules are designed to address ammonia and are not intended to address odor or other pollutants; however, the BMPs may provide positive benefits for these issues as well.

MERCURY IN THE ENVIRONMENT

Mike DuBois, DEQ State Air Toxics Analyst, presented a discussion on mercury in Idaho and explained what is known about mercury in the environment, mercury sources, and what DEQ is currently doing about mercury and the proposed plan for the future (Attachment 3).

Chairman MacMillan asked whether DEQ actions regarding mercury in Idaho were based on EPA standards and concerns or actual information that mercury was a problem and had damaged human health in Idaho. Mr. DuBois explained DEQ initiated investigations when it became aware of gold mining operations in Nevada and proposed coal-fired power plants in Idaho that might in combination create a problem. DEQ then applied for funding from EPA to conduct monitoring. The Idaho Department of Health and Welfare (DHW) has been collaborating with DEQ on mercury issues. While there is no data specific to Idaho showing mercury poisoning in any individuals, DHW is very confident in the studies presented by EPA. Mr. DuBois believed the actions taken were in a preventative mode and felt the DHW was the best source to respond to detailed questions regarding human health risks.

Director Toni Hardesty added that DEQ has been working very closely with DHW on the mercury issues. The DHW clarifies in its presentations that the fish advisories are preventative and target the high-risk population. DHW also stresses fish is part of a healthy diet and it is not recommending people not eat fish. However, depending on where you fish, and if you are a pregnant female, you may want to take into consideration the amount of fish you consume from certain water bodies. Education is a very important component of the program so people clearly understand what a fish advisory says.

Chairman MacMillan was concerned EPA actions were unnecessarily alarming the public regarding the level of risk, and felt more definitive studies were needed.

CLEAN AIR MERCURY RULE OVERVIEW, STATUS, AND NEXT STEPS

Martin Bauer provided a presentation (Attachment 4) on the Clean Air Mercury Rule (CAMR). The CAMR rule is a national mercury rule for coal-fired electric utilities only; it does not address any other sources. The rule has two components:

- A revision to the new source performance standards to establish stack emission limit on mercury for coal-fired electric utilities.
- Establishes a national cap-and-trade program that sets state budgets and an emissions trading program.

The rule will require monitoring mercury and sets a two-phase reduction goal of 21% reduction by 2010 and 70% reduction by 2018. Idaho has been given a zero cap because there are currently no coal-fired electric facilities in the state. Mr. Bauer reviewed the three options available for states to demonstrate compliance with state budgets:

- **Plan A:** EPA has created a model rule and set up a national trading program. States can:
 - 1) adopt the model rule through incorporation of the rule into state standards and then participate in the EPA-administered trading program; or
 - 2) opt in to the program and customize the allocation methodology of the model rule into a state rule and then participate in the EPA-run trading program. This state rule could be more stringent than the federal rule and the state stringency law requirements would have to be met.
- **Plan B:** Establish state emission limitations to keep total emissions under the state budget. The state budget is a hard cap. This means the state would opt out of the federal program and write rules that would require coal-fired power facilities to come in under the zero cap.
- **Plan C:** Do nothing. EPA would then automatically opt the state in to the trading program.

The CAMR went out for public comment on August 3, 2005, and was extended until October 26, 2005. On October 21, 2005 DEQ was notified that EPA was reconsidering the rule, so DEQ withdrew the proposed CAMR. The process is on hold until EPA's reconsideration is final, possibly by June 2006. There are several issues under consideration: one is the legality of whether it should be a new source performance standard or a national emission standard for hazardous air pollutants; the other major issue is how the states were assigned caps. When the reconsideration is final, DEQ will brief the Governor on the federal rule and the Governor will then decide which option to choose. Currently, there is a November deadline for states to opt in or opt out of the cap-and-trade program.

Mr. Bauer reviewed the next steps:

- DEQ will go out for public comment.
- Comments will be taken and a final proposed rule will be drafted.
- The proposed rule will go before the DEQ Board.
- If approved by the Board, the rule will move forward to the Idaho Legislature for final approval.

Don Chisholm commented on the many public comments the Board had received requesting Idaho to opt out of the federal cap and trade program and making an informal request to initiate rulemaking. He asked how DEQ would handle the logistics of conducting two rulemakings with different proposals. Lisa Kronberg, Deputy Attorney General, responded the Administrative Procedures Act provided a specific process to initiate rulemaking. If a formal petition is filed, DEQ will respond with one rulemaking to consider all proposals and options. A separate rulemaking would not be started in response to the petition. Ms. Kronberg will draft a response explaining the process. Chairman MacMillan thought it would be valuable to include information about the options available to the state.

Director Hardesty added DEQ has asked EPA to consider extending the November deadline to allow states more time to respond. EPA has not yet responded to the request.

Linda Lemmon, Idaho Aquaculture Association, asked if it was possible to temporarily opt out of the program, with an opportunity to opt in at a later date. Martin Bauer confirmed it was possible to opt out temporarily, and then opt in to the program at any time in the future. It is not possible, however, to opt in to the program, and then opt out later.

Lisa Kronberg briefly discussed House bill 791 passed by the Idaho Legislature last session which places a two-year moratorium on construction of certain coal fired power plants. Mr. Bauer noted there was also an Interim Energy Committee currently gathering information to develop a plan. DEQ will make a presentation to the Committee to explain the environmental regulations that may relate to an energy plan. He discussed how DEQ will use the negotiated rulemaking process to best respond to the concerns of the citizens.

Craig Harlen left the conference call at 12:00 p.m. to attend another meeting.

WATER QUALITY STANDARDS HARDNESS CAP

Don Essig, Water Quality Standards Coordinator, presented a discussion regarding water hardness and metals toxicity and explained how they are addressed in the Water Quality Standards aquatic life criteria and hardness cap (Attachment 5). Water hardness tends to lower the toxicity of metals. Aquatic life criteria are developed by looking at a mixture of toxicity tests, testing protocols, science policy, and risk management decisions. A hardness cap is a limit, high or low, on the values of hardness used in the equations for toxicity of some metals.

In the mid-1980's there was very little data available of metals toxicity at hardness less than 25 mg/L. In a risk management decision, EPA policy makers decided to limit range of hardness used in equations to avoid extrapolation into unknown territory. However, there is now more data available including tests specifically done at hardness <25 mg/L. In 2002 EPA recommended there be no low-end hardness cap.

DEQ would like to begin a dialog to respond to the EPA recommendation by initiating negotiated rulemaking this summer to discuss possible changes to the Idaho Water Quality Standards regarding the hardness cap.

Chairman MacMillan asked if there was evidence in the low hardness streams in Idaho where there is potential for toxic metals that there has been damage to the aquatic life from cadmium. Mr. Essig stated he was not aware of any specific situations. Pine Creek is one area that might have some observable effects, but he had not reviewed the macro invertebrate data. Chairman

MacMillan asked if there was any data showing that the hardness cap of 25 was damaging aquatic life in Idaho. Mr. Essig responded there was not. He emphasized it was more of a preventative measure and following where the data and science leads.

Jack Lyman, Idaho Mining Association (IMA), asked what other states had done to respond to the EPA recommendation to eliminate the low-end hardness cap. He also asked how likely it was EPA would take action if Idaho failed to respond. Don Essig deferred to EPA regarding the question of how likely it was to take action, but noted EPA has stepped in and taken action to promulgate rules twice in the past for Idaho. EPA has already stepped in and taken action in California to promulgate a federal toxic rule that eliminated the hardness cap. Mr. Essig will investigate to learn the actions taken by other states and report back.

Mr. Lyman questioned why the issue was being brought up at this point in time and asked if there had been communication with EPA since the last time this matter was before the Board. Mr. Essig responded the discussion at today's workshop was presented as an educational briefing on the background of the hardness cap and the relationship between hardness and metals toxicity. The negotiated rulemaking is being proposed as a means to open a dialog to discuss the new data and information now available. The hardness cap was discussed only as a sidebar issue in previous rulemaking; the negotiated rulemaking being proposed would focus on the hardness cap as a core issue. Director Hardesty recalled the Board had indicated during the previous rulemaking that there was an issue as to whether the scientific data existed regarding a hardness cap and directed DEQ to continue to study the issue, collect information, and determine whether it was appropriate to reconsider the issue. Chairman MacMillan confirmed Director Hardesty's understanding of the direction and expectations of the Board.

Mr. Lyman expressed concern the issue was being proposed as a formal negotiated rulemaking, rather than simply discussing any new data in informal meetings. He felt the rulemaking process implied intent to change the rule. Although IMA's first response is that it disputes whether there is adequate scientific data to justify changing the hardness cap, they certainly will be at the table for any negotiated rulemaking or other meetings to discuss the matter.

Director Hardesty clarified it is not a foregone conclusion that there will be a rule change as a result of the negotiated rulemaking. She assured it is really DEQ's intent to initiate discussions again, and the agency recognizes there will be different opinions. Negotiated rulemaking is the forum DEQ uses to ensure that all parties who are interested in participating are allowed to come forward and take part in the discussions.

Mr. Lyman stated that publishing a notice of intent to initiate rulemaking would raise expectations among some people suggesting that DEQ intends to change the rule. He further stated that doing so may not be consistent with the Board's intent. He suggested as an interim step, DEQ hold open meetings to discuss the matter. Mr. Lyman commented that it appeared DEQ's position is there should be a rule change. Mr. Essig responded his personal opinion was that there is data to support doing something different, but he has not predetermined what that should be. Director Hardesty stated it was DEQ's position that there is enough new data to warrant looking at the situation; it is just a matter of the process used to engage in the dialog. Although there are a number of ways to go about it, DEQ is most concerned the process is open and there is an opportunity for everyone to participate. She welcomed input from the Board on how the process should proceed.

Jack Lyman observed there was no statutory requirement or legislative directive to initiate the rulemaking, and believed that absent any compelling evidence that EPA is pressuring Idaho or stepping in to impose a federal rule, the legislature would not be supportive of a rule change to eliminate a hardness cap.

Lisa Kronberg, Deputy Attorney General, advised from a legal standpoint, the notice of proposed rulemaking could be written broadly to clarify that the process may or may not result in a rule change. She pointed out the risk of having an interim group discuss the matter outside of the negotiated rulemaking process. Any decisions or conclusions of such a group would probably have to be repeated under the formal rulemaking process to ensure all interested parties had an opportunity to participate.

Mr. Lyman reiterated his concern that DEQ not commit to the formal negotiated rulemaking process without having at least one informal meeting to gather input from stakeholders to see if the time is right to commit agency and industry resources to the formal rulemaking process. Director Hardesty acknowledged Mr. Lyman's concerns stating that while DEQ is concerned about the question that it is not being required by EPA, DEQ also believes it has an obligation to bring information forward to be evaluated and considered by both the Board and the legislature when data indicates that its standards may not be appropriate. She assured DEQ has heard the expectations loud and clear that it practice good science. DEQ is trying to look at the big picture, and other programs can be dependant on DEQ's ability to demonstrate that the state has protective water quality standards; for example, pursuing primacy for NPDES permitting. If EPA views DEQ's standards as out of step, it could be even more difficult to get primacy of such a program.

Chris Mebane, NOAA/USGS, briefly discussed the previous rulemaking process regarding the site-specific criteria for the South Fork Coeur d'Alene River. Mr. Mebane worked for DEQ at that time as the Water Quality Standards Coordinator. There was discussion with EPA at that time regarding whether it was appropriate to have a hardness cap. The EPA policy representatives, who essentially control whether the criteria are approved, would not budge on the issue and the criteria were adopted with no cap.

UPDATE ON WATER QUALITY TEMPERATURE SUMMIT

Johnna Sandow, Water Quality Standards Specialist, reported on the Water Quality Temperature Summit held by DEQ this year (Attachment 6). She clarified DEQ is not planning any rulemaking for temperature standards during the 2007 legislative session. The purpose of the Summit was to engage and educate stakeholders about temperature issues in the Idaho Water Quality Standards. Idaho is required by EPA to conduct a Triennial Review of its water quality standards. The process was started in the summer of 2004, and after trying to balance the priorities received from the public, EPA, and internally at DEQ, it became clear that temperature was one of the top issues. Idaho's current criteria are not workable, and there is a stalemate with EPA. Many of the waters in Idaho, even in the wilderness areas, do not meet the current criteria. There is a one-size-fits-all approach that may not be appropriate for Idaho due to its diversity.

The Summit focused on educating a diverse group of stakeholders on the current standards, efforts to address issues, and EPA perspectives. DEQ learned a number of things from the Summit including:

- Confirmed its suppositions that the issue would be polarized.
- There is no overwhelming momentum for any single option.

- There is surprising support for site-specific criteria.
- EPA's position on delisting based on natural background (EPA will require a very solid case for any request to de-list based on natural background).

DEQ is in the process of developing a summary letter on the Summit to send to meeting participants and interested parties. The letter will include a proposal to reconvene a diverse group of interested parties to tackle the issue and perhaps develop suggestions for a path forward. DEQ plans to first develop some strategic considerations within the agency based on information received from EPA and possible options.

The key points of the issue include:

- The Clean Water Act requires protection of aquatic life.
- EPA has indicated in communications with DEQ that it's full attention will be on Idaho soon.
- Current Idaho Water Quality Standards are not adequate.
- Temperature is a controversial topic.
- There is currently no clear path forward.

Marti Calabretta attended the Summit and commented Idaho is a very diverse state and believed that diversity must be fully considered—Idaho must reject the one-size-fits-all theory. She further stated the practical, common sense people of Northern Idaho support moving forward with measures that make sense.

GROUND WATER NATURAL BACKGROUND AND SIGNIFICANT DEGRADATION

Ed Hagen, Lead Ground Water Hydrogeologist, provided a detailed explanation of the development of the DEQ guidance for the Ground Water Quality Rule (Attachment 7). The objectives of the guidance document are to:

- Define background and degradation statistically.
- Provide a standardized framework or process to evaluate ground water quality data.
- Develop a guidance document that describes how to determine natural background and degradation in a manner that is consistent with the Ground Water Quality Rule.
- Utilize a decision tree showing required elements.
- Provide flexibility for site-specific conditions.
- Suggest certain statistical tools but allow for negotiated alternatives.

Dr. Joan Cloonan asked if during the process of developing the guidance, DEQ was finding areas that might be better addressed through rule changes versus application of guidance. Director Hardesty indicated DEQ is very sensitive to the fact that guidance is guidance; she has clarified that to staff, and they have embraced that philosophy. As the development of this guidance progresses, there may be places where people think regulations would clarify issues more than guidance. DEQ will be very open to those concerns, and the issues will be fully discussed. There are so many site-specific issues that it is difficult to have a one-size-fits-all scenario.

Mr. Hagen stated DEQ will propose rule changes in 2006 to:

- Add primary standard for fecal coliform of <1 (changed from zero based on comments).
- Add primary standard for E.coli of <1 (changed from zero based on comments).
- Keep standard for total coliform (changed from remove standard based on comments).

Negotiated rulemaking was conducted on April 19, 2006. Comments were received from one private citizen, the Central District Health Department, the Idaho State Department of Agriculture, the Idaho Department of Water Resources, and the State Laboratory; all support the proposed rule changes.

Senator Bob Geddes asked what the difference was between less than one and zero and how compliance would be determined. Mr. Hagen responded it was measured by the lab as one colony of coliform per a certain unit of water, and the sample analyzed by the lab would include a number of units of water. It is more a matter of the language the lab uses to report test results; the report shows less than one.

DRINKING WATER POINT OF USE DEVICE UPDATE

Jeri Henry, Drinking Water Compliance & Enforcement Lead, provided an update on the arsenic rule, the point of use rule, and the compliance agreement schedules (Attachment 8).

- The new 10 ppb arsenic standard became effective on January 23, 2006
 - 990 water systems in Idaho have to be in compliance.
 - For the current three-year monitoring period of 2005-2007, 355 systems have been sampled to date and 49 of those systems are over the 10 ppb standard; 635 systems still need to be sampled by 12/31/2007.
 - Historical data (1/1/2002 – 4/21/2006) indicates 90 systems have had at least one sample showing arsenic over the 10 ppb standard. This does not mean they are out of compliance. They may have already implemented a strategy to resolve the problem or subsequent samples may have been under 10 ppb (the standard is based on a running annual average).
- DEQ has established 32 Compliance Agreement Schedules with water systems to allow them time to come into compliance with the new arsenic standard.
- The Point of Use Rule (POU) became effective on 11/17/05.
 - POU water treatment devices cannot be used for acute contaminants (NO₃ and Microbial) or dermal absorbed contaminants (Radon, VOCs).
 - The DEQ Boise Regional Office anticipates 10-15 waster system will consider POU treatment devices for arsenic.
 - 77 of the 90 systems (that have had arsenic levels over the 10 ppb standard) have under 200 connections.
 - POU guidance is currently being reviewed by the Attorney General's Office.
 - Three water systems have installed POU treatment devices for arsenic and/or nitrate prior to the new rule (Canadaigua Wine Company, Mores Creek Rim Ranches, Sunset Ranch).
- EPA has successful pilot projects working with the city of Fruitland and Sunset Ranch to install new water treatment technology to reduce the level of arsenic in drinking water (See Attachment 8 for Fact Sheet).

The meeting adjourned at 4:30 p.m.

/s/

Dr. John R. MacMillan, Chairman

/s/

Craig Harlen, Secretary

/s/

Debra L. Cline, Management Assistant and Recorder