

MEMORANDUM

DATE: December 4, 2015

TO: Members of the Board of Environmental Quality

FROM: Doug Conde

RE: Process for the Appointment of Hearing Officers

On November 18, 2015, I presented to you the process DEQ currently uses to solicit and present hearing officer applicants for Board approval and the process used to select a hearing officer from the Board's approved list to preside over a specific contested case. We also discussed ways of improving on that process, by giving the Board an opportunity to review and object to the selection of a hearing officer for a specific contested case. During that discussion, you requested that I set out the process in writing for your review prior to the December 10, 2015 Board meeting. This memorandum set forth the process to be used going forward for the appointment of hearing officers.

Process for Soliciting and Presenting Hearing Officers for Board Approval

The hearing coordinator maintains a list of board approved hearing officers. The list includes the location of the hearing officers, the types of cases they have each presided over, and the case names and docket numbers. The case names and docket numbers provide information regarding the year the petition was filed and the subject matter of the case. A copy of the list is attached. The current list of Board approved hearing officers, and the towns in which they reside, is posted on the Board of Environmental Quality web page.

When DEQ feels the need to add Hearing Officers to the list, for example when DEQ no longer has sufficient hearing officers available in Boise where most contested cases are heard, DEQ will run an advertisement in the Advocate (the Idaho State Bar Journal) or other appropriate publication. DEQ may choose to use another appropriate form of advertisement, such as the internet. Often, however, DEQ may receive unsolicited requests from lawyers to act as hearing officers.

Minimum qualifications for hearing officers include current license to practice law in the state of Idaho, at least five years legal experience, and civil or administrative trial experience. Experience in environmental law is preferable. These minimum qualifications were determined by the Board.

Attorneys interested in becoming a hearing officer contact the hearing coordinator. Prior to board consideration of a hearing officer applicant, the applicant is asked to provide a resume with references, a letter of recommendation, and a short writing sample. Board consideration of the application is set for the next available Board meeting. The applicant is asked to attend the Board meeting. The attorney general's office may provide a recommendation to the Board regarding the hearing officer.

Process for Appointment of Hearing Officers to Preside Over Contested Cases

Once a petition for a contested case is filed, a hearing officer must be chosen from the Board approved list. (The contested case rules provide that the appointment is administered by the hearing coordinator.) Criteria for choosing a hearing officer from the Board approved list:

1) Location

The hearing coordinator will choose a hearing officer nearest the location of the facility that is the subject matter of the petition unless all parties agree that it would be more convenient to hold the contested case hearing in Boise. In that case, a Boise hearing officer is chosen for appointment.

2) Subject Matter of the Petition

The hearing coordinator will choose a hearing officer that is most familiar with the subject matter of the petition.

3) Public Hearing on the Permit that is the Subject of the Petition

If a public hearing was held regarding the issuance of a permit and conducted by a Board approved hearing officer, and that permit once issued is appealed through a contested case, the hearing coordinator will choose the hearing officer who handled the public hearing, unless he or she is in a location that is not the most convenient for the contested case hearing.

4) List Rotation

In the event that criteria 1 through 3 do not apply, the hearing coordinator will choose the hearing officer that is up next in the rotation.

Opportunity for Board Members to Reject the Hearing Coordinator's Selection of Hearing Officer

Upon receipt of a petition for a contested case, the hearing coordinator will forward to each Board member a copy of the petition along with a cover letter. The letter will inform the Board that the petition has been filed and will include the name of the hearing officer selected for appointment, and the criteria under which the selection was made. The letter will also request that the Board inform the hearing coordinator by a certain date whether a Board member would like to set a meeting to discuss the appointment of the hearing officer or to discuss whether the Board, or one or more members of the Board, would like to hear the contested case. If the hearing coordinator does not hear from the Board by the date specified in the letter, the hearing coordinator will proceed with the appointment of the hearing officer named in the letter. A copy of the letter is attached.

**DEQ Hearing Officers
December 2015**

<u>Cases Assigned</u>	<u>Hearing Officer</u>	<u>Status</u>
0115-03-17 (Young's Septic Service) 0117-04-03 (Simplot Aberdeen WLAP) 0103-07-02 (Sunnyside Park Utilities)	Frederick F. Belzer Attorney at Law 850 East Center P.O. Box 4947 Pocatello, ID 83205 (208) 234-7118 Fax: (208) 234-7139 belzerlaw@aol.com	Contract K093 Contract start date 8/1/15 Renew 6/16 (expires 7/31/16) \$135/hour
Cache Valley Idaho PM2.5 Nonattainment Area SIP hearing - 11/29/12 Portneuf Valley SIP hearing – 3/11/14 Cache Valley SIP for PM2.5 – 12/10/14 Preston	Mark R. Petersen Snake River Law PLLC 168 N. Main P.O. Box 4984 Pocatello, ID 83205-4984 Facsimile to 888-560-8785 (208)406-9885 mark@snakeriverlaw.com	Contract expires 12/31/15 renewal in progress
0108-99-01,02,03 (Harbor View Estates/Gerlitz) 0101-02-01 (Potlatch)	Heidi Fisher Child & Fisher 212 S. 11 th Street, Ste. #1 Coeur d'Alene, ID 83814 (208) 667-4571 Fax: (208) 664-6648 mailbox@childandfisher.com	Contract K076 Contract start date 5/18/15 Renew 2/16 (expires 3/31/16) \$135/hour
	Richard P. Wallace Attorney at Law 2370 N. Merritt Creek Loup #1 Coeur d'Alene, ID 83814 (208) 292-2691 Fax: (208)292-2693 rich@wallacelegal.com	Contract expires 12/31/15 renewal in progress
	Edwin L. Litteneker Attorney at Law P.O. Box 321 Lewiston, ID 83501-0321 Facsimile to (208)798-8387 (208)746-0344 ed@littenekerlaw.com	Contract K075 contract start date 5/18/15 Renew 2/16 (expires 3/31/16) \$135 per hour

<u>Cases Assigned</u>	<u>Hearing Officer</u>	<u>Status</u>
0102-07-06 (Pristine Springs 401 certification) 0102-08-02 (Micron Technology, Inc.) 0101-12-05 (Freeman v DEQ)	Elaine Eberharter-Maki Moore Smith Buxton & Turke 950 W. Bannock St., Ste 520 Boise, ID 83702 Facsimile to: 331-1202 331-1800 eem@msbtlaw.com	Contract K086 contract start date 7/3/15 Renew 5/16 (expires 6/30/16) \$135 per hour
0112-10-01 (city of Bliss FONSI) 0102-12-03 (401 water quality certification of Army Corps of Engineers 404 Nationwide Permits) 0101-14-01 (ConAgra/ Magnida intervenor)	Michael J. Kane Michael Kane & Associates, PLLC P.O. Box 2865 Boise, ID 83701-2865 Facsimile to 342-2323 342-4545 mkane@ktlaw.net Tracey Presler tpresler@ktlaw.net	Contract expires 12/31/15 renewal in progress
0117-09-02 (Centers/Meridian Heights Water and Sewer Assoc.) 0101-10-03 (McClaran v DEQ) 0101-11-02 (Canyon County v DEQ) 0101-11-04 (Freeman v DEQ)	Trent Marcus Marcus, Christian & Hardee 737 N. 7 th Street Boise, ID 83702-5504 Facsimile to 342-3580 342-3563 tmlaw@qwestoffice.net	Contract K078 contract start date 5/18/15 Renew 2/16 (expires 3/31/16) \$135 per hour
0101-12-02 (Hidden Hollow Energy LLC) 0101-12-04 (Hidden Hollow Energy LLC)	John C. Lynn Attorney at Law 776 E. Riverside Dr., Ste. 240 Eagle, ID 83616-6964 Facsimile to 258-8416 685-2333 860-5258 cell phone johnlynn@fiberpipe.net john@johnlynnlaw.com	Contract K103 contract start date 9/1/15 Renew 7/16 (expires 8/31/16) \$135 per hour
	David E. Wynkoop Sherer & Wynkoop 730 N. Main Street P.O. Box 31 Meridian, ID 83680-2604 887-4800 Facsimile to 887-4865 Dwynkooplaw@gmail.com	Contract K087 Contract start date 7/1/15 Renew 5/15 Expires 6/30/16

EXAMPLE COVER LETTER

July 30, 2012

Board of Environmental Quality
1410 N. Hilton
Boise, ID 83706-1255

Hidden Hollow Energy LLC v DEQ, Docket No. 58-0101-12-02

Dear Members of the Board of Environmental Quality:

Enclosed is a copy of a Petition Initiating a Contested Case filed on July 24, 2012 and the Notice of Filing and Service of Petition. IDAPA 58.01.23.047 requires that the Board publish a legal notice upon receipt of a petition for contested case. Enclosed is a copy of the legal notice for newspaper publication.

By August 13, 2015 (10 days from mailing of this letter), I will appoint David Wynkoop as the hearing officer for this case if I have not received notice that a member of the Board requests the scheduling of a Board meeting to discuss the appointment of a different hearing officer or to discuss whether the Board, or one or more members of the Board, wish to hear the contested case in lieu of the proposed hearing officer.

I selected David Wynkoop to preside over this contested case because he is located in Boise, which is the location of the facility that is the subject matter of this petition, and he has not been appointed since his approval by the Board on May 20, 2015. The other criteria do not apply.

If you have any questions, or if I can be of any further assistance, you can contact me at (208)373-0418.

Sincerely,

Paula J. Wilson
Hearing Coordinator