



State of Idaho
DEPARTMENT OF ENVIRONMENTAL QUALITY
Board of Environmental Quality

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Dirk Kempthorne, Governor
C. Stephen Allred, Director

IDAHO BOARD OF ENVIRONMENTAL QUALITY

MINUTES

June 20, 2002

The Board of Environmental Quality convened on June 20, 2002 at 8:30 a.m. at:

Stanley Community Center
Highway 21 Community Center
Stanley, Idaho

ROLL CALL

BOARD MEMBERS PRESENT:

Donald J. Chisholm, Chairman
Dr. Joan Cloonan, Member
Nick Purdy, Member
Dr. J. Randy MacMillan, Member
Marguerite McLaughlin, Member

BOARD MEMBERS ABSENT:

Paul C. Agidius, Vice chairman
Marti Calabretta, Secretary

DEPARTMENT OF ENVIRONMENTAL QUALITY STAFF PRESENT:

C. Stephen Allred, Director
Debra Cline, Management Assistant to the Board
Susan Burke, State Water Quality Program
Jess Byrne, Resource Officer
Barry Burnell, Life Sciences Discipline Lead
Doug Conde, Deputy Attorney General, DEQ
Keith Donahue, Deputy Attorney General, DEQ
Paula Gradwohl, Administrative Rules Coordinator
Orville Green, Administrator, State Waste Management & Remediation Program
Liisa Itkonen, Planning Division
Jason Jedry, Administrative Services
Kate Kelly, Administrator, Air Quality Program
Pam Smolczynski, Environmental Program Planner
Dave Mabe, Administrator, Water Quality Program
Jon Sandoval, Chief of Staff
Alan Stanford, Senior Water Quality Analyst

OTHERS PRESENT:

Representative Lenore Barrett, Idaho House, District 26
Kevin Beaton, Stoel Rives
Rich Carlson, Idaho Rural Council
Bill Chisholm, Idaho Rural Council
Dan Cogger, Idaho Rural Council
Bill Eddy, North Lake Rec. Sewer & Water, Donnelly
Robbin Finch, Boise City
Dr. Christine Hahn, Medical Director and State Epidemiologist,
Idaho Department of Health & Welfare
Emma High, Stanley
Jack Lyman, Idaho Mining Assoc.
Jay C. Neider, Stanley
Dick Rush, Idaho Assoc. of Commerce & Industry
Dick Schultz, Administrator Division of Health, IDHW
Elke Shaw-Tulloch, Chief, Bureau of Environmental Health, IDHW
Ed Smith, Twin Falls
Helen Smith, Twin Falls
Rob Sterling, Micron Technology
Dean Vlachos, Advent Group

- ❖ All attachments referenced in these minutes are permanent attachments to the minutes on file at the Idaho Department of Environmental Quality. To obtain a copy, contact the Board assistant.

WORKSESSION

Director Steve Allred briefly discussed ongoing issues at DEQ including the Coeur d'Alene Basin cleanup, the Mica Bay enforcement action in northern Idaho, the Smoke Management Program in northern Idaho, the Air Quality Permitting Program, the problems small water systems are facing complying with federal and state regulations, and DEQ's efforts to assume primacy of the NPDES Program.

Briefing on Agenda Item 5 – Status Report on the Rules for the Control of Air Pollution in Idaho (Establish a standard for acceptable ambient levels of hydrogen sulfide and averaging times)

Dick Schultz, Administrator, Division of Health, Department of Health and Welfare, discussed the challenges dealing with environmental exposures such as hydrogen sulfide. There is a bit of a gray area in terms of how individuals respond to exposures. Most data is population-based data and generalizations are made based on populations' experience as to what risks are associated with exposure. One example of how health risks are estimated using population-based data is cigarette smoking.

Dr. Christine Hahn, Medical Director and State Epidemiologist, discussed the health effects of hydrogen sulfide. (See Attachment 1 for slide presentation.) There is good information that clearly shows that acute, high-level exposure to hydrogen sulfide is deadly and

can kill people with just a few breaths (generally 50,000 – 200,000 parts per billion). However, there is less data on the effects of lower-level chronic exposure (generally less than 10,000 ppb). It is considered a broad-spectrum poison and can effect multiple organ systems. Exposure to lower concentrations can result in eye irritation, sore throat, cough, shortness of breath, and fluid in the lungs. These symptoms usually go away in a few weeks if exposure is removed. However, there is some data suggesting that long-term lower levels may result in fatigue, loss of appetite, headaches, irritability, poor memory, and dizziness. It has not been shown to cause cancer. Its ability to cause cancer in animals has not been studied fully.

Children may be more vulnerable to the effects of hydrogen sulfide because they may be exposed to larger amounts than adults. Hydrogen sulfide is a heavy gas and since children are shorter, the air they breathe may contain higher levels of the gas. It is not know whether hydrogen sulfide can cause birth defects.

Most people can detect the odor of hydrogen sulfide at 20 ppb, asthmatics may react with bronchial constriction at 2,000 ppb, and eye stinging and irritation occur at 10,000 ppb. Most workplace standards such as OSHA fall between 20-50,000 ppb. There is objective evidence at this range such as redness of eyes and irritation of the respiratory tract. At 250,000 ppb, serious health affects start to occur such as fluid accumulation in the lungs, and at 500,000 ppb there is rapid progression to death. Information at these levels is usually done after death and it is difficult to reconstruct and estimate the exact concentration of gas at death.

Dr. Randy MacMillan asked if hydrogen sulfide was a cellular toxin and if animal studies had been conducted. Dr. Hahn confirmed that it is a cellular toxin. There is robust information on studies of the affects of different levels on animals. Animals seem to respond with the same effects discussed earlier at acute levels. Long-range, low-level chronic exposure has not been studied.

Dick Schultz explained that there is a range of human risk associated with increasing exposure to hydrogen sulfide. The Division of Health staff will discuss the increasing line of health impact from no physical impact to death, and try to explain where they believe a standard should be set from a public health standpoint. It is the Board's responsibility to evaluate the public health perspective against other issues that must be considered in setting a regulatory standard. They will attempt to supply the Board with a health-based risk from which to make its decision.

Elke Shaw-Tulloch, Chief, Bureau of Environmental Health, provided a presentation on the process used to develop health assessments. (See attachment 2 for slide presentation.) She explained the dose – response relationship and provided some basic toxicology information. Since there is not a lot of scientific data on the effects of chronic exposure to hydrogen sulfide, they rely on extrapolating animal studies to humans and making scientific assumptions. To determine a guidance level for a chemical, the lowest observable adverse effects level (LOAEL) is established. This is the lowest concentration of the chemical at which adverse health effects are seen. For hydrogen sulfide, the LOAEL is 2,000 ppb or the level at which asthmatics experience bronchial obstruction. The no observable adverse effects level (NOAEL) is also established. This is the level at which no adverse health affects are seen. Protective factors, or uncertainty factors, are then applied to derive guidance levels. Protective or uncertainty factors account for converting animal studies to human populations, variability in humans, etc.. Most guidelines are established below the NOAEL. The Division of Health typically follows the

guidance of the Agency for Toxic Substances and Disease Registry (ATSDR), a federal public health agency. ATSDR develops minimal risk levels (MRLs) – estimates of the daily exposure to a hazardous substance that is likely to be without appreciable risk of adverse non-cancer health effects. The MRL is used to identify potential health risks. It is substance-specific, not for cleanup or action levels. The development of an MRL is a health-based decision and does not consider any economic impacts of the decision. ATSDR has established an acute inhalation MRL of 70 ppb (1 – 14 day exposure duration); and an intermediate inhalation MRL of 30 (15 – 364 days exposure duration). ATSDR has not established a chronic MRL because they feel there is not enough health risk information to make such a decision. However, the EPA has established a chronic reference concentration (RfC) for hydrogen sulfide of 0.7 ppb. The RfC is an estimate (with uncertainty) of a daily inhalation exposure of the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime. The EPA chronic reference dose is 0.003 mg/kg/day.

The OSHA occupational standard for hydrogen sulfide is 20,000 ppb as a ceiling level and 50,000 ppb for a 10-minute duration. There are also other similar workplace standards in place. Each state is also starting to develop their own standards. California has established a reference exposure level of 8 ppb based upon health information they reviewed.

At the request of DEQ, the Division of Health provided toxicological review of the hydrogen sulfide ambient air monitoring research conducted at Filer, Idaho near the Halfiger dairy. They reviewed the environmental sampling data, literature about the health effects of hydrogen sulfide, and reviewed existing federal and state hydrogen sulfide standards and guidance levels. The Division of Health then developed the following recommended standards:

- Ceiling Level: 200 ppb
- 30-minute average concentration: 30 ppb
- 24-hour average concentration: 10 ppb
- Annual average concentration: 1.4 ppb

She noted that the Division of Health's recommendations provide a range of concentrations and averaging times for the Board's consideration and does not take into consideration economic impacts. The recommendation is included in a July 5, 2001 letter to Kate Kelly from Mingyi Wen, SC.D., a Toxicologist for the Division of Health. The letter contains information with justification for each recommendation. (Attachment 3)

Chairman Chisholm asked if this information was available to the regulated community so they could comment on it. Kate Kelly noted that most of this information has either been put on the DEQ website or is available through the Division of Health. DEQ can also distribute it.

Dr. Randy MacMillan asked if other toxicologists had reviewed the information and come to the same conclusions. Elke Shaw-Tulloch responded that Dr. Patricia McGavran performed some work for DEQ, reviewing similar information and developed similar recommendations.

Chairman Chisholm questioned why OSHA standards were substantially higher than those recommended by the Division of Health. Ms. Shaw-Tulloch explained that in workplace studies individuals are exposed to the chemical for a finite amount of time and workers are monitored the entire time. A typical workday is only 8 hours compared to the 24-hour average of the general public. An individual in a community cannot be monitored and there are other

factors involved. When an individual is being constantly monitored, there is also the ability to take remedial action if there is excessive exposure. If a worker reaches his maximum exposure in two hours, he is removed from that environment. A more stringent level is needed for the community because they are not constantly monitored. The workplace also does not typically have a high-risk population with the most susceptible individuals such as children, pregnant women and other sensitive individuals.

Kate Kelly discussed how the air quality regulations deal with different types of air pollution. Permit conditions can be used to regulate point sources such as smoke stacks, but pollutants such as hydrogen sulfide typically come from a larger area and do not have a specific controlled point where you can measure pollution. In these cases an ambient air quality standard is adopted.

Director Steve Allred commented that a policy decision is needed to determine what percentage of the population should be protected. Generally, in the environmental arena, particularly with cancer, levels are set to protect to a risk factor of one in one million. Dick Schulz added that another consideration is the more sensitive populations. For example with hydrogen sulfide, asthmatics are the most sensitive population. About 10% of the population in Idaho have asthma.

Dr. Randy MacMillan asked if the EPA had plans to adopt a national standard for hydrogen sulfide. Kate Kelly responded that the EPA issued a call for data in 2000 to start the process, but there has been little action since then. The regulation of air toxins continues to be a priority of the EPA. DEQ has investigated the standards of other states and continues to study how those standards were developed, how they are measured, and how they are enforced.

Dr. Joan Cloonan noted that the National Academy of Science is conducting studies on confined animal feeding operations of various sorts on a national level. Kate Kelly stated DEQ is following this study and other national developments closely.

Director Allred discussed the equipment and measuring techniques used to gather information on hydrogen sulfide levels around the state.

Briefing on Agenda Item No. 10 - Petition for Initiation of Rule Making by the Idaho Association of Commerce and Industry (Requesting amendment to the Idaho Water Quality Standards)

Dave Mabe, Administrator, State Water Quality Program, briefed the Board on Agenda Item No. 10, Petition for Initiation of Rule Making by the Idaho Association of Commerce and Industry. The requested rulemaking would put some boundaries on the way the reasonable potential to exceed is calculated for NPDES permits. Staff has been working with IACI to develop an acceptable path forward with the petition. DEQ recommended the Board accept the petition and proceed with regular rulemaking. The Department may come back to the Board during the first week of August 2002 with a request for a temporary rule. The rule will put in place statewide standards on how to develop the numbers for the reasonable potential to exceed calculation. He warned that EPA might not be receptive to the proposed change.

Dick Rush, IACI, submitted written comments (Attachment 4) and briefly discussed the urgency of getting this rule change done to assist the City of Boise with its permitting process. He noted other industries have also expressed their interest and support of this rulemaking.

Dean Vlachos, a water resources engineer with the Advent Group (an environmental engineering consultant group based in Denver, Colorado) gave a presentation on the studies he has conducted on behalf of his client, Micron Technology. Mr. Vlachos explained the need for a standardized and formalized process that the regulated community and the regulators can use as a procedure to take water quality criteria that have been adopted by the state of Idaho and translate it into NPDES permits. He explained the technical process proposed by the rulemaking.

Robin Finch, Water Quality Manager for Boise City Public Works, discussed how the proposed rule change would affect the city's permits. He presented a letter for the Board's consideration from the Idaho Association of Cities in support of the IACI petition for rulemaking (Attachment 5).

DEQ Long-range Strategic Plan Report

Pam Smolzynski, Environmental Program Planner, reviewed the current draft of the DEQ long-range strategic plan (Attachment 6). The long-range plan will cover the next 25 years. The document outlines the general philosophy for the plan and incorporates the suggestions and concepts discussed at the Board's June 4, 2002 planning meeting.

Chairman Don Chisholm discussed the importance of involving other state agencies so the plan can be developed as a statewide environmental plan, rather than just a DEQ plan. He felt the main goal at this point should be to gain the cooperation of the state, with the support of the Idaho Legislature, to develop a statewide environmental plan with DEQ as the lead agency. Dr. Joan Cloonan suggested a process similar to that used to develop the statewide Ground Water Quality Plan. Marguerite McLaughlin suggested the plan start with the executive branch at the Governor's office. Director Allred commented that he has already discussed the matter to some extent with both the Governor's office and germane legislative committees. He believed the most appropriate process would be to present information in broad terms on the plan and its objectives to the Governor's office using the mechanism for the approval of executive legislation. The legislation could authorize the development of an environmental plan, similar to the State Water Plan.

Briefing on Agenda Item No. 4 – Rules Governing Fees for Environmental Operating Permits, Licenses, and Inspection Services, Docket Nos. 58-0114-0201, 16-0505-0201 (Temporary Rule) (Transfer sections imposing environmental fees from Health & Welfare chapter to new DEQ chapter)

Barry Burnell, Discipline Lead for Life Sciences, explained the purpose of this rulemaking is to delete text from the portion of the Department of Health and Welfare's rules on environmental fees and to adopt it as temporary rules for DEQ. The rule does not increase the fees; it simply shifts the fee authority from DHW to DEQ.

DEQ Supplemental Environmental Projects Program

Kate Kelly, Administrator, State Air Quality Program, provided a presentation on the Supplemental Environmental Projects Program. The program provides an opportunity for companies who would otherwise be subject to a penalty, to pay for an environmentally beneficial project in lieu of paying penalties to the Department. The program is voluntary, and the cost of the project must be twice what the fines are. Many good environmental projects have been implemented as a result of the program.

PUBLIC COMMENT PERIOD – THE BOARD ALLOWS UP TO 30 MINUTES FOR THE PUBLIC TO ADDRESS THE BOARD ON ISSUES NOT SPECIFICALLY SHOWN AS AGENDA ITEMS.

Chairman Don Chisholm welcomed State Representative Lenore Barrett from Challis, Idaho and thanked her for attending the meeting.

Chairman Chisholm stated the Board would not take specific action on adoption of a hydrogen sulfide standard at this meeting, but would be providing direction to the Department on future action. He opened the floor to public comment on the issue.

Bill Chisholm, a resident from the Buhl area, testified in support of setting a state standard for hydrogen sulfide to protect the health, safety, and welfare of the people. He expressed his concern for the health problems the people in the Cedar Draw area are experiencing from the effects of hydrogen sulfide levels in that area. He stated he was also concerned that there seems to be an attempt to separate the nuisance aspect from the health issues. He stressed that nuisance issues long term do affect human health. The odor causes a host of problems that impact the quality of life and health of the public. The sleep deprivation, stress, nausea, anger and other problems caused by the odor all affect health when they are constantly exposed to it. He urged the Board to take the health aspect of the nuisance odor into consideration when setting the standard for hydrogen sulfide levels. He emphasized the need to set a standard that protects the most people possible.

Bill Chisholm observed that there seems to be an attitude that those being regulated are the ones who need protection, rather than those being victimized. He has worked with this issue for ten years. He stated his experience was that the Idaho State Department of Agriculture seems to put obstacles in the way and may not be the right agency to solve this problem. They seem to be protecting the perpetrator, rather than taking on the regulatory responsibility of protecting the people who are victimized. He encouraged the Board to ensure its process is not deferred by the efforts of the ISDA.

Rich Carlson testified on behalf of the Idaho Rural Council, a group of several hundred members. The Council supports setting a state standard for hydrogen sulfide. They have been taking part in the rulemaking process with the ISDA for the last two years without much success. They believe the state needs a standard for hydrogen sulfide and support the levels presented in the scientific information provided by DEQ. The Council supplied information on hydrogen sulfide standards set by other states. The standards used by the state of Minnesota are almost identical to those proposed by Idaho State. Minnesota conducted a comprehensive study called the Generic Environmental Impact Statement that included social and health issues related to CAFOs.

Mr. Carlson thanked the Board and the DEQ for their efforts in bringing this matter forward. He discussed the monitoring efforts of DEQ and the ISDA. During a tour with the director of the ISDA last August, an instantaneous reading was taken at a dairy south of Filer of 1500 ppb. The ISDA has been monitoring hydrogen sulfide levels for the past year at dairy sites and the numbers are often 400 – 500 ppb. The numbers are way off the scale of what the Iowa and Minnesota studies indicate are healthful. Mr. Carlson related the story of a close friend who lived near one of the dairies that recently moved because of their fears for the health of their newborn daughter. The couple had recently completed building a quarter million dollar home when one of the problem dairies went into business ¼ mile from them. After their daughter was born last October they decided to move because of the health threats to the general public and babies in particular from hydrogen sulfide that were documented in the Iowa study. This is not something the citizens of the state of Idaho should have to do. The Council requested that the standards be set at the property line of the sources so that people are not made to be hostages in their homes. People should be able to have use of the property and be able to go outside their homes. The Council will also be submitting as part of its written comments studies by Dr. Susan Shiffman of Duke University Medical School. Dr. Shiffman has studied the psychological effects of nuisance odors. The studies of Dr. Shiffman and others have concluded that these odors can cause psychological damage due to sleep deprivation, stress and the other problems they cause. These injuries are harder to detect, but just as real as other physical injuries. The Council requested the Board consider this information in setting the standards.

Phuong Smith, a resident of the Filer area, provided testimony on the affects the hydrogen sulfide emitted by neighboring dairies have had on her life. After the dairies moved in, she began experiencing health problems with dizziness, headaches, and chronic coughing. They never know when the odors will hit, so they are afraid to open their windows because it will fill their home with the smell of a septic tank or ammonia within minutes. If they open their windows at night to cool the house and the winds shift the odor into the house, they wake up in the morning with headaches and dizziness. She stated she is a different person because of the odors and cannot enjoy her home or gardening anymore. She urged the Board to consider these problems and take action to help them.

Ed Smith, a resident of the Cedar Draw area in Filer, testified in support of setting a livable standard for hydrogen sulfide. He urged the Board to crosscheck the monitoring information and the number of complaints received by the DEQ and ISDA to determine what level to set the standard. He feared the level would be set so high that facilities can operate underneath it, destroy the neighborhoods, and be protected by the law.

Don Goddard, a Twin Falls resident, testified in support of setting a standard for hydrogen sulfide. He voiced his agreement with the statements made by the other area residents. Mr. Goddard stressed the criteria for setting the standards should not be whether or not the legislature will approve it. He felt the protection of the public health should be the main issue, not whether or not it will make it through the legislature. He also supported tying the odor and health issue together. Chairman Chisholm explained that if the Board adopted a rule the legislature would not affirm; there would be no rule in effect. Mr. Goddard asserted that it is the responsibility of DEQ and the Board to protect the environment for the health of the people, and they should take action to fulfill that responsibility regardless of what they think the legislature will do. He urged the Board not to liberalize the standard just so it will get by the legislature.

Chairman Chisholm acknowledged his concerns, and suggested the residents work with the legislature as well as the Board to be effective.

Director Allred noted that every effort was made to inform all interested parties that the hydrogen sulfide issue would be an item of discussion at this meeting.

AGENDA ITEM NO. 1: ADOPTION OF APRIL 25, 2002 MINUTES

- **MOTION:** Marguerite McLaughlin moved the Board adopt the minutes of the April 25, 2002 Board meeting as prepared and distributed.
- SECOND:** Nick Purdy
- VOICE VOTE:** Motion passed unanimously; 5 ayes; 2 absent (Paul Agidius, Marti Calabretta).

AGENDA ITEM NO. 2: DIRECTOR'S REPORT

Director Steve Allred reported briefly on the Office of Performance Evaluation/JLOC Report and the status of rulemaking/negotiations on the Title V Program fees. The report found that the fees were not sufficient and questioned the fee structure. The current structure causes the small emitters to pay a bigger percentage of the fees than they should based on the amount of their emissions (38% of the fees were being paid by those who create only 19% of the emissions). The study also compared Idaho's fees to surrounding states' and found that Idaho's fees were the second lowest.

AGENDA ITEM NO. 3 GROUND WATER QUALITY RULE, DOCKET NO. 580111-0201
(PENDING RULE)

Susan Burke, Compliance Specialist for the Water Quality Program, explained the changes on the proposed rule docket are for housekeeping matters and to provide clarification. Section 004 is being deleted because it refers to an IDAPA citation in Idaho's Water Quality Standards and Wastewater Treatment Requirements that no longer exists. Subsection 200.01.c is being deleted as standards for radioactive materials are already included in Table II. Subsection 200.01.d is being amended to provide that cyanide shall be analyzed as weak acid dissociable cyanide using a method approved by DEQ. This change reflects current DEQ practice allowing mining operations to analyze cyanide as weak acid dissociable cyanide. The final change is to incorporate the July 2001 federal rules and regulations.

- **MOTION:** Dr. Joan Cloonan moved the Board adopt, as pending rules, the Ground Water Quality Rule as presented in the final proposal under Docket No. 58-0111-0201.
- SECOND:** Dr. Randy MacMillan
- VOICE VOTE:** Motion passed unanimously; 5 ayes; 2 absent (Paul Agidius, Marti Calabretta).

AGENDA ITEM NO. 4

RULES GOVERNING FEES FOR ENVIRONMENTAL OPERATING PERMITS, LICENSES, AND INSPECTION SERVICES, DOCKET NOS. 58-0114-0201, 16-0505-0201 (TEMPORARY RULE)

Barry Burnell explained this rulemaking is needed to transfer the fee authority from the Department of Health and Welfare to DEQ for programs DEQ has delegated to health districts. There is no increase in fees imposed by this action.

- **MOTION:** Dr. Randy MacMillan moved the Board adopt, as temporary rules, the Rules Governing Fees for Environmental Operating Permits, Licenses and Inspection Services as presented under Docket No. 58-0114-0201, with an effective date of July 1, 2002.

SECOND: Dr. Joan Cloonan

VOICE VOTE: Motion passed unanimously; 5 ayes; 2 absent (Paul Agidius, Marti Calabretta).

- **MOTION:** Dr. Randy MacMillan moved the Board adopt, as temporary rules, the Rules Governing Fees for Health and Environmental Operating Permits, Licenses and Inspection Services as presented under Docket No. 16-0505-0201, with an effective date of July 1, 2002.

SECOND: Dr. Joan Cloonan

VOICE VOTE: Motion passed unanimously; 5 ayes; 2 absent (Paul Agidius, Marti Calabretta).

AGENDA ITEM NO. 5

STATUS REPORT ON THE RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO (ESTABLISH A STANDARD FOR ACCEPTABLE AMBIENT LEVELS OF HYDROGEN SULFIDE AND AVERAGING TIMES)

Kate Kelly reported that in response to the Board's direction in its April meeting, DEQ has collected information on both hydrogen sulfide levels in Idaho and the general public health effects of hydrogen sulfide. The DEQ and the Division of Health are gathering health related data to inform and assist the Board in any decision it may choose to make on setting a hydrogen sulfide standard for the state.

The DEQ is also taking steps to ensure it has the ability to both measure and enforce any standard that may be adopted. DEQ issued a call for data in May, and continues to address the information and concerns they received. They will also continue to work with the Division of Health and the ISDA as the process moves forward with the Board's direction.

Director Steve Allred stated DEQ would have the scientific information available needed to make the kind of value decisions the Board will have to make if a standard is established. The Department will continue to perfect and answer questions regarding the monitoring. Director Allred asked the Board how it would like to proceed at this time. Chairman Chisholm observed that since the Board will be meeting in early August to address the water quality rules, it seemed reasonable to have DEQ present a temporary rule at that time, realizing that work still needs to be done to inform the public on the issue. The Governor's office must also concur before a temporary rule can go forward. Nick Purdy commented that in order to justify a temporary rule, health data or information on specific cases of people being at risk would be needed. Mr. Purdy stated he supported a temporary rule, but wanted to make sure a case could be made to support it.

Kate Kelly noted that public participation is not a mandatory part of the temporary rule process, but it does not prohibit it either. DEQ could bring a temporary rule forward; assuming concurrence is received from the Governor's office. The Board will want to consider whether or not more data is needed, or if it wants to provide an opportunity for more public comment before that time. Obviously if there is an imminent public health threat, the luxury of being able to do that would be hampered. That is a decision that needs to be made. There is a lot of public interest in this issue, and that should be factored into any time frame. There are also some technical issues to work through, and DEQ is optimistic those can be resolved.

Chairman Chisholm asked if the rule language had been prepared for a temporary rule. Kate Kelly responded that the actual rule language was not complex and it would be simple to add the standards.

Dr. Joan Cloonan asked how the enforcement component would work with the different areas of jurisdiction. Kate Kelly explained the Odor Management Act which gives authority to the ISDA to deal with odor issues with dairies, reserves to DEQ all its authorities under the EPHA including air quality regulations. So the two coexist in this situation. Dr. Cloonan asked how the wastewater lagoons would be handled. Ms. Kelly responded that ISDA would handle wastewater treatment and how it is conducted within the dairy. DEQ would handle the air quality violations.

Dr. Cloonan questioned whether a temporary rule, which goes into effect immediately upon adoption by the Board, would put some facilities in violation; and if that was sufficient notice to those facilities from a legal perspective. Kate Kelly noted this is always a concern with a temporary rule. DEQ would have to measure a violation after the rule went into effect, so the monitoring would cause some delay. There has already been a lot of public discussion, and if additional formal public participation is conducted before the Board considers a temporary rule, that may well be considered an appropriate integration into implementation of a standard. Dr. Cloonan agreed and felt the dairies and others should already be aware of a possible standard, but they probably need some warning if there is an enforceable regulation coming into affect on a specific date.

Chairman Chisholm suggested that if a temporary rule is brought to the August 6, 2002 Board meeting, a press release should also be done containing some of the data presented to the Board by the Division of Health in its earlier presentation to explain why the standard is being considered and involve the public in the process. He believed educating the public about the health aspects would be key to implementing a successful standard and gaining compliance.

Dr. Randy MacMillan asked if the call for data resulted in any comments or information challenging the health affects of hydrogen sulfide. Kate Kelly replied that DEQ has received correspondence from a potentially affected industry raising concerns; whether or not those concerns tie into the scientific basis for a health-based standard or the affect of a health-based standard are two subtly but importantly different questions.

Chairman Chisholm asked if it was practical to bring a temporary rule to the August 2002 meeting, or if it should be delayed to a later time. Kate Kelly felt it would be reasonable to target the August meeting. DEQ could update the Board if any glitches arise that cannot be resolved. She also recommended the Board direct DEQ to conduct some form of formal public outreach before the August meeting. Although this has already been done on the technical aspects, she

felt strongly the public should be allowed an opportunity to comment. Ms. Kelly noted that it is possible the Department may find that it is not an appropriate time to go forward with the rule in August. In that event, DEQ will provide the Board with sound justification for not going forward.

Director Allred emphasized that for the Board to take action on a temporary rule in August, it should be convinced that there is an emergency and a need to take action. He felt the issue would be clear by August. He also stressed the importance of getting a draft rule published for public review and comment. Director Allred reiterated that the regulated community was invited to this meeting. He suggested a fact sheet or discussion paper (prepared with the assistance of the Division of Health) be included with the draft rule to educate the public on the issue.

➤ **MOTION:** Nick Purdy moved the Board direct DEQ to prepare a temporary rule for consideration at the August 2002 Board meeting setting a standard for hydrogen sulfide; and prior to that, to publish a draft rule and take public input through written comments and by holding a public meeting. The draft rule should be made available to the general public as well as concentrating on the regulated community so that both views may be considered.

DISCUSSION: Chairman Chisholm questioned if the intent was that it was to be a temporary rule for setting a hydrogen sulfide standard protective of human health. Mr. Purdy confirmed that was the intent of his motion.

SECOND: Marguerite McLaughlin

VOICE VOTE: Motion passed unanimously; 5 ayes; 2 absent (Paul Agidius, Marti Calabretta).

AGENDA ITEM NO. 6 **DRINKING WATER STATE REVOLVING FUND (SRF) PRIORITY AND FUNDABLE LISTS FOR FISCAL YEAR 2003**

Alan Stanford, Senior Water Quality Analyst for the state Water Quality Program, presented agenda items 6, 7, 8 and 9. The lists set the priority for drinking water, planning, water pollution control, and wastewater planning projects for fiscal year 2003. Mr. Stanford discussed how the lists were developed, how the programs are funded, and how the projects are rated. He also discussed some additions and revisions to the lists since they were mailed to Board members.

➤ **MOTION:** Marguerite McLaughlin moved the Board approve the fiscal year 2003 State Drinking Water Loan Priority and Fundable Lists as presented by the Department of Environmental Quality.

SECOND: Dr. Joan Cloonan

VOICE VOTE: Motion passed unanimously; 5 ayes; 2 absent (Paul Agidius, Marti Calabretta).

AGENDA ITEM NO. 7 **DRINKING WATER PLANNING GRANT PROJECT PRIORITY LIST FOR FISCAL YEAR 2003**

➤ **MOTION:** Marguerite McLaughlin moved the Board approve the fiscal year 2003 State Drinking Water Planning Grant Project Priority List as presented by the Department of Environmental Quality.

SECOND: Dr. Joan Cloonan

VOICE VOTE: Motion passed unanimously; 5 ayes; 2 absent (Paul Agidius, Marti Calabretta).

AGENDA ITEM NO. 8 **WATER POLLUTION CONTROL LOAN STATE REVOLVING FUND (SRF) PRIORITY AND FUNDABLE LISTS FOR FISCAL YEAR 2003**

Jim Keller, District Engineer, North Lake Recreational Sewer and Water District, commented they have been very pleased with the DEQ staff and their support of North Lake's projects. They have had a very successful association since 1994 when their initial 7.8 million dollar project was installed and funded. Mr. Keller stressed North Lake's interest in receiving a loan and discussed the need to move forward with construction of its proposed project by next April or May.

➤ **MOTION:** Marguerite McLaughlin moved the Board approve the fiscal year 2003 Water Pollution Control Loan Priority and Fundable Lists as presented by the Department of Environmental Quality with the changes presented on the list today. (See Attachment 7 for revised list.)

SECOND: Dr. Joan Cloonan

VOICE VOTE: Motion passed unanimously; 5 ayes; 2 absent (Paul Agidius, Marti Calabretta).

AGENDA ITEM NO. 9 **WASTEWATER PLANNING GRANT PROJECT PRIORITY LIST FOR FISCAL YEAR 2003**

➤ **MOTION:** Marguerite McLaughlin moved the Board approve the fiscal year 2003 State Wastewater Planning Grant Project Priority List as presented by the Department of Environmental Quality.

SECOND: Dr. Joan Cloonan

VOICE VOTE: Motion passed unanimously; 5 ayes; 2 absent (Paul Agidius, Marti Calabretta).

AGENDA ITEM NO. 10 **PETITION FOR INITIATION OF RULE MAKING BY THE IDAHO ASSOCIATION OF COMMERCE AND INDUSTRY**

David Mabe, Administrator, State Water Quality Program, advised that DEQ staff have worked with IACI, the City of Boise, and other interested parties involved with the petition over the last two weeks, and have developed an acceptable path forward for dealing with the petition. DEQ staff recommend the Board accept the petition and direct the Department to proceed with development of a regular rulemaking package. Regular rulemaking will appear in the August Administrative Rules Bulletin. DEQ will continue to work with the EPA to resolve remaining concerns. If the issues are not resolved, DEQ will request a temporary rule at the August Board meeting. The draft rule will be an amendment to the water quality standards that helps DEQ determine several calculated numbers that are necessary to use in the overall equation to determine whether (NPDES) permit limits are necessary, and if limits are necessary, how they should be calculated. It specifically deals with the concentration of pollution levels, effluent concentration level, and how to calculate the hardness numbers used in the reasonable potential to exceed calculation.

Dick Rush, IACI, submitted written comments on the petition (Attachment 4).

- **MOTION:** Dr. Randy MacMillan moved the Board direct staff of IDEQ to initiate regular rulemaking under the Administrative Procedures Act by publishing the text of the rule in the next available bulletin and by preparing a temporary rule to present to the Board at its August 2002 meeting if the issues with the EPA are not resolved.

SECOND: Dr. Joan Cloonan

VOICE VOTE: Motion passed unanimously; 5 ayes; 2 absent (Paul Agidius, Marti Calabretta).

AGENDA ITEM NO. 11 **CONTESTED CASE AND RULE DOCKET STATUS REPORTS**

Paula Gradwohl, Administrative Rules Coordinator, reviewed the Board's contested case report and docket status report. Doug Conde discussed the appeal of the 401 certification for the relicensing of the C. J. Strike Hydropower Project. The case needs to be scheduled for oral argument before the Board. A date will be set at the August Board meeting. The central Attorney General's office will appoint an attorney to assist the Board with the hearing and writing the ultimate decision on the case.

AGENDA ITEM NO. 12 **LOCAL REPORTS AND ITEMS BOARD MEMBERS MAY WISH TO PRESENT**

Chairman Don Chisholm discussed options for the long-range strategic plan. He requested Larry Koenig and Pam Smolzynski prepare a resolution for the Board's consideration at its next meeting. The resolution is to request the Governor's office to propose a state environmental plan. The Board will further refine the current draft plan with continuing input from Board members. The draft will accompany the resolution as a suggested starting point for a statewide plan.

The next Board meeting was set for August 6, 2002 at 9:30 a.m. at the DEQ Conference Center in Boise, Idaho.

AGENDA ITEM NO. 13 **BOARD DEVELOPMENT ISSUE**

No issues presented.

The meeting adjourned at 3:00 p.m.

Donald J. Chisholm, Chairman

Marti Calabretta, Secretary

Debra L. Cline, Management Assistant and Recorder

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- ❖ All attachments referenced in these minutes are permanent attachments to the minutes on file at the Idaho Department of Environmental Quality. A copy can be obtained from the assistant to the Board of Environmental Quality.