



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

August 6, 2002

The Board of Environmental Quality convened on August 6, 2002 at 9:30 a.m. at:

Idaho Department of Environmental Quality
1410 N. Hilton, Conference Rooms A & B
Boise, Idaho

ROLL CALL

BOARD MEMBERS PRESENT:

Paul C. Agidius, Chairman
Dr. J. Randy MacMillan, Vice-chairman
Marti Calabretta, Secretary
Donald J. Chisholm, Member
Dr. Joan Cloonan, Member (joined the meeting via conference call at 1:00 p.m.)

BOARD MEMBERS ABSENT:

Marguerite McLaughlin, Member
Nick Purdy, Member

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
Bruce Louks, Monitoring Program Coordinator, Air Quality Program
Dave Mabe, Administrator, Water Quality Program
Jon Sandoval, Chief of Staff
Pam Smolczynski, Environmental Program Planner
Alan Stanford, Senior Water Quality Analyst
Tim Teater, Air Quality Analyst, Air Toxics

OTHERS PRESENT:

Tom Dupuis, CH2M Hill

Robbin Finch, Boise City

Jane Gorsuch, Intermountain Forest Association

Dr. Christine Hahn, Medical Director and State Epidemiologist,

Idaho Department of Health & Welfare

Brad Hoaglnn, Idaho Hay Association

Tim Hurst, Cassia County

Lijun Jin, Division of Health, IDHW

Lloyd Knight, Idaho Cattle Association

Bob Naerebout, Dairy Farmers of America

Brent Olmstead, Milk Producers of Idaho

Alan Prouty, J. R. Simplot Company

Dick Rush, Idaho Assoc. of Commerce & Industry

Jennifer Sandmann, Times-News

Suzanne Schaefer, SBS Associates LLC

Dr. Ron Sheffield, University of Idaho, Department of Biological and Agricultural Engineering,

Dick Schultz, Administrator Division of Health, IDHW

Elke Shaw-Tulloch, Chief, Bureau of Environmental Health, IDHW

B. F. "Toy" Smith, Northwest Dairy Association

Doug Strickland, City of Boise

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 record of decision for the Coeur d'Alene Basin cleanup, the lawsuits over field burning in northern Idaho, and the Title V Program fee rulemaking.

Briefing on Agenda Item No. 7 - Water Quality Standards and Wastewater Treatment Requirements, Docket No. 58-0102-0203 (Temporary Rule) (Water effects ratio for copper and lead for City of Boise NPDES discharge)

David Mabe, Administrator, State Water Quality Program, advised this rulemaking is being withdrawn. The issue of the water effects ratio for the city of Boise in their discharge into the Boise River has been resolved with EPA. The issue was whether or not DEQ would be able to have an effective water effects ratio adopted for use in the city of Boise's permit in the amendment process. It was agreed that because DEQ has adopted by rule the process by which the ratios are developed, it does not need to adopt the ratios themselves as rules. The ratios are now available and in effect for EPA to use in the permitting process. Therefore, there is no need to adopt a temporary rule for the actual watershed effects ratios for lead and copper. A pending rule will be published in the August bulletin. Once final written concurrence is received from the EPA permitting unit, the pending rule will be withdrawn.

Doug Strickland, City of Boise, confirmed the city of Boise concurred with the resolution of the matter and the withdrawal of the rulemaking as discussed by David Mabe.

Briefing on Agenda Item No. 8 - Water Quality Standards and Wastewater Treatment Requirements, Docket No. 58-0102-0205 (Temporary Rule) (Reasonable Potential to Exceed calculations for NPDES permits)

David Mabe explained this rulemaking is related to agenda item No. 7 in that it also involves the City of Boise discharge permit and the process used to calculate limits. This rule deals with the calculation of the reasonable potential to exceed, which determines whether or not a permit limit is necessary. DEQ has put together a process where the City of Boise packaged their permit amendments based on the new watershed effects ratios, and submitted them to EPA for review under the agreement they had with EPA on their NPDES permit administrative challenge. EPA is now in the process of reviewing whether or not the reasonable potential to exceed calculations would result in permit limits for Boise. A final answer should be received from EPA in about a month.

DEQ would like to adopt this as a temporary rule. If EPA and the City of Boise are able to concur that no permit limits are necessary, DEQ would withdraw the rule and put the process back into the NPDES delegation discussions.

The City of Boise submitted written comments supporting this rulemaking. EPA submitted comments expressing concerns with the process proposed in this rulemaking. EPA believes this is not the appropriate forum to address the issue, and that the determination of these numbers is part of the permitting process, not a part of the application of water quality standards. (See Attachment 1 for the full written comments of the EPA).

Chairman Don Chisholm questioned whether adoption of the rule could result in industrial or municipal entities making capital investment decisions based on the rule, then later finding they have a problem because EPA makes a different finding. David Mabe explained that the statistical evaluation methods proposed in the rule would give a slightly lower result than the EPA process. He believed the entities would have adequate notice that this dispute exists before they would commit dollars. Municipalities would probably not set up and budget without having at least a draft permit in place. The 401 Certification process also has the ability to have a compliance schedule.

Chairman Chisholm asked if an advantage was given to a certain class of the regulated community over other classes that are affected by the TMDL. By setting liberal standards on the NPDES permit, does it penalize agriculture or any other party who may be contributing to a water body? David Mabe explained the process addressed in this rule would be used for pollutants that have not exceeded the water quality standards. We are deciding what level of protectiveness or level of risk we are willing to take that we will get close to the standard. In the TMDL process, the standard has already been exceeded and the goal is to lower the pollutants. Mr. Mabe felt the risk was relatively minimal to others in the discharger community from the standpoint of TMDLs because 1) it deals with pollutants that have not exceeded the limits and the NPDES permits are reviewed every five years; and 2) for TMDLs nonpoint sources have voluntary implementation plans. If a slight excursion is allowed by a point source, it is not necessarily true that we are forcing nonpoint sources to make additional investment to help control.

Chairman Chisholm asked if a regulatory estoppel existed when an entity made capital investments based on certain standards in a regulation, and then they were not able to proceed because the regulation was changed. He was concerned that having a rule more liberal than what EPA will demand would send the wrong signal and cause someone financial difficulties later. Doug Conde, Deputy Attorney General, stated estoppel against a government agency is extremely difficult to establish and is rarely an issue. He did not feel it would be an issue in this case.

Paul Agidius asked what assurance DEQ had to check the quality of the data gathered by permittees. David Mabe stated the testing methodology for NPDES permits is established in the code of federal regulations. DEQ does not audit the individual monitoring results and check to make sure the QA/QC plan is being followed. That is a focus for DEQ internally, and they may establish a focus on external collectors in the future.

Director Steve Allred explained the permit holder is required to use an EPA approved lab and the protocol is audited by EPA. Theoretically, the audit occurs at the laboratory and the person submitting the sample does not determine the protocol. However, a sample can be affected by how it is taken, and not all laboratories are the same. Some are more diligent than others are.

Dr. Randy MacMillan supported the reasonable potential to exceed process proposed in the rule. He was comfortable with the existing safeguards to ensure the correctness of data collected by permittees. A big question for point source polluters is whether the studies done by universities for EPA are accurate and representative.

Dick Rush, IACI, read and submitted written comments (Attachment 2) supporting the proposed rule.

Briefing on Agenda Item 9 - Status Report on Initiation of Rulemaking for Rules for the Control of Air Pollution in Idaho, Docket No. 58-0101-0204 (Establish a Standard for Acceptable Ambient Levels of Hydrogen Sulfide and Averaging Times)

Kate Kelly, Administrator, Idaho Air Quality Program, provided a brief history of the rulemaking on the docket. She also introduced Dr. Ron Sheffield, University of Idaho, Department of Biological and Agricultural Engineering, and stated he would be available for questions, but would not provide a presentation.

The proposed rule language has been submitted to the Department of Administration for publication in the rules bulletin. Due to the large amount of public interest and the complicated nature of the scientific and health related information and measuring and monitoring information, a temporary rule will not be presented. The formal rulemaking process will be followed. If at any time there is an imminent public health threat perceived to exist as a result of hydrogen sulfide emissions in Idaho, the Board may choose to adopt a temporary rule. The Governor and the Director also have authority to react to such an emergency.

The proposed rule will be published in the September 2002 edition of the Administrative Bulletin. The formal 30-day public comment period will begin at that time. Three public hearings will also be conducted during the month of September. In October DEQ will prepare its

formal response to comment and make any final decisions on the rule language to be brought to the Board in November 2002. If the rule is approved at the November Board meeting, it will go to the legislature and if approved, become effective upon adjournment of the legislature.

Ms. Kelly distributed a summary of public comments received over the last five months. Significant public input has already been received regarding the adoption of a hydrogen sulfide rule. She stressed that in accordance with the direction of the Board, the rule will create a health-based hydrogen sulfide standard designed to protect the public health, not one that addresses nuisance or odors.

DEQ began monitoring hydrogen sulfide levels during the summer of 2001 in response to concerns raised and complaints received. In April 2002 DEQ began the work to develop a health-based standard including working closely with the Division of Health to understand the health implications, soliciting public input, and researching how other states are dealing with hydrogen sulfide emissions. In May 2002, DEQ issued a formal call for scientific or health data related to the development of a standard. At the June 20, 2002 Board meeting the Division of Health presented detailed information on the health effects of hydrogen sulfide and a discussion of the literature and scientific studies. DEQ then drafted proposed rule language adopting the Division of Health recommendations and distributed it along with a fact sheet and a request for formal public input. Public meetings were held in Twin Falls and Lewiston to take hear public input. DEQ took the comments into consideration when drafting the proposed rule that was submitted to the Department of Administration.

Kate Kelly distributed the draft rule along with existing rule language regarding point of compliance. Tim Teater, Air Toxics Program Analyst, reviewed the draft rule on a point-by-point basis. The rule language proposes a hydrogen sulfide ambient standard with two averaging periods and a ceiling level. Section A is a 24-hour standard. It proposes 20 parts per billion (28 micrograms per cubic meter) not to be exceeded more than once in a 30-day period measured at the point of compliance as defined in Section 210.03.b. After reviewing other states' standards and the types of sources in Idaho, it was determined a 24-hour standard was most appropriate. The original rule language contained a level of 10 ppb. It was changed to 20 ppb because 5 to 10 ppb is considered by many to be the odor threshold, and DEQ wanted to ensure the rule was health-based. It was selected as a level that would still be protective of public health, but not be confused with odor complaints.

Because a 24-hour period may contain very high short-term levels that can be very problematic, a one-hour standard is also proposed. The original rule language contained a 30-minute average of 30 ppb. The 30-minute standard was ruled out because it is such a short averaging time, it was felt that it might result in violations that did not rise to an actual health hazard. A one-hour standard appears to be more compatible with the kinds of sources in Idaho and the nature of hydrogen sulfide emissions from those sources. The 30 ppb was increased to 35 ppb because it is thought to be most appropriate in consideration of the short-term peaks and in keeping with a health-based standard.

The Division of Health recommended a ceiling level 200 ppb. The rule language proposes a ceiling of 400 ppb. DEQ believes a ceiling level of 200 ppb is too stringent to be practicably enforced in Idaho. They feared it might lead to constant violations that did not rise to the level of a health hazard. DEQ wanted to set a ceiling level based more on the physiological health affects that might occur from this kind of peak. The 400 ppb, when considering both

health affects and the ability of the sources in the state to operate and function in a reasonable manner, seems to be the most reasonable level.

Dr. Randy MacMillian asked why the proposed standards seemed so much lower than the levels discussed in the ATSDR information. Kate Kelly pointed out the purpose of the hydrogen sulfide standard is to establish a statewide baseline standard for all facilities in Idaho. Tim Teater explained the ATSDR has a lot of data and when most health or environmental agencies use that data, they add uncertainty factors and other factors that lower the levels. When you are trying to protect a disparate population that includes the very elderly, the very young, women who are or may become pregnant, etc., you must factor to overcome the uncertainty in the data you use. It is a widely accepted process.

Tim Teater stated that one aspect of the health affects of hydrogen sulfide that the ATSDR document does not in any way address is the neural-behavioral aspect of chronic low level exposure to hydrogen sulfide. Most of the ATSDR literature discusses things that are related to the irritant affect of hydrogen sulfide such as eye, nasal, and upper-respiratory irritation. These are not the only health affects of hydrogen sulfide. There is adequate, good data that shows the need to address the neuro-behavioral and neurological affects of hydrogen sulfide. Independent research was conducted and published in peer review. Dr. Schiffman and her colleagues and others have discovered that people exposed to constant or near constant low levels of hydrogen sulfide experience headache, nausea, diarrhea, and altered mood states. These are not just the complaints of people who hate the dairies or industry; these symptoms are seen in people all over the country. Mr. Teater found the data to be very convincing and believed it would be irresponsible for DEQ to set a standard that did not address this aspect. DEQ considered all of the health affects, not just the irritative health affects, to set a standard that is protective of public health while allowing people to do business in a reasonable way. He noted that not everyone agrees with these studies, but the chemical hydrogen sulfide is considered neuro-toxic resulting in neuro-behavior and neurological deficit and problems. One researcher indicated that his research shows that these deficits may be long term or permanent. Mr. Teater will provide references on the studies to Dr. MacMillan.

Dr. MacMillan asked if Dr. Schiffman's studies indicated that a level of 20 or 30 ppb would be protective of public health. Tim Teater stated that Dr. Schiffman did not develop a recommended level but she and other researchers in this area have discussed the levels implicated in these types of health affects. He emphasized that these affects are from chronic exposures. These levels may only cause aggravation over a few weeks, but people who live down wind from a facility are being exposed to these levels in a chronic manner.

Dr. MacMillan asked if there was medical or scientific evidence indicating that low concentrations of hydrogen sulfide adversely affects individuals with chronic obstructive pulmonary disease (COPD), asthma, or other respiratory diseases. Dr. Christine Hahn, Medical Director and State Epidemiologist, Idaho Department of Health & Welfare, responded that existing data suggests that asthmatics react at 2000 ppb. She was not aware of specific data regarding COPD. Some individuals with COPD have an asthmatic component and may react similarly. She pointed out that the handout (Attachment 3) contains charts showing the levels set by other states. Most states add the protective factors and the recommendations of the DoH generally fall within the range of what other states have set in trying to protect public health.

Marti Calabretta was not present at the June 20, 2002 Board meeting and asked if there were handouts other than the Powerpoint presentation that supported the Division of Health recommended levels. Kate Kelly responded the Division of Health has spent many hours of professional work preparing its recommendation and assisting DEQ with this issue. The document, *Idaho Division of Health Recommended Hydrogen Sulfide Ambient Air Concentration Standards*, July 2002 (Attachment 3) presents the issue in plain language. Ms. Calabretta stated it was her understanding that the whole arena of health affects is not well studied and has its pros and cons. The Board is being asked to act on a rule based on unsettled science. She asked to be provided with any additional information.

Richard Schultz, Administrator, Division of Health, explained there is a continuum of risk. It is difficult to find study populations that are willing to expose themselves to chronic low-level exposure to any substance so they can be humanly tested over time. So there is minimal data on low-level exposure to hydrogen sulfide, as there is to multiple other chemicals in the environment. The data is somewhat equivocal on the lower end of the level. Therefore, the Division of Health has taken protective factors and introduced them into the recommendations. They have attempted to show in the handouts and in the presentation at the June meeting that as one goes up the exposure level, there is increasing health impacts. Somewhere along that line of increasing health impacts, the Board may choose to set a regulatory level. It is the Division of Health's job to make recommendations that are protective of the public health. They took the factors they considered most protective of the public health at the lowest levels to set their recommendation. He clarified that it is the Division of Health's job to protect public health, not to make a judgment call on where on the scale of increasing impact of health is an appropriate social political place to put a regulatory limit. The Division of Health is attempting to protect the most vulnerable citizens. They have no problem with the modifications DEQ has made to the Division of Health's recommendation because it is still within their limit of uncertainty. Mr. Schultz believed the DEQ recommendations are still well within the public health interests. Where the Board ultimately decides to set the regulatory level should be based on the public health impact as well as other issues. The Division of Health is not attempting to set a regulatory limit, but to express a limit they feel is most protective of the public health. The Board can then set a regulatory limit it feels is reasonable.

Director Steve Allred briefly discussed how DEQ became involved in the hydrogen sulfide issue and how enforcement would be handled if a regulatory level were established. He emphasized that the proposed standards would not pose a problem for most of the facilities DEQ has monitored. Setting a standard will set an expectation, so that when designing a facility people can make plans to accomplish those levels. It has a public health benefit and brings certainty to the regulated community.

Bruce Louks, DEQ Monitoring Program Coordinator, gave a slide presentation on Monitoring for Hydrogen Sulfide in the Atmosphere (Attachment 4). He explained how the hydrogen sulfide monitoring program was developed. Their goals were to identify methods for monitoring hydrogen sulfide in the ambient air, and to evaluate those methods for future use in assessing compliance with a standard. DEQ collected as much data as possible to identify sources of emissions and assess population exposure to hydrogen sulfide in Idaho. The data quality objectives were developed using detailed EPA guidance documents to ensure that a resource effective data collection program was created. The documents tell how, when, where and how many samples to collect. It also identifies the tolerable level of uncertainty that would result from the data collected. By using this process, it assures that the type, quantity, and

quality of the environmental data used in decision making will be appropriate for the intended application. Extensive data has been collected from a variety of sites throughout the state. Mr. Louks explained in detail the equipment used to collect the data and reviewed the findings of the monitoring program.

Dr. Randy MacMillan asked how many violations of the proposed standards would have occurred in the data collected by the Department. Kate Kelly responded there would have been very few violations. Bruce Louks noted that if DEQ was not measuring a source, they would not know if a violation occurred. DEQ is proposing “complaint driven” enforcement for the standard. Director Allred explained one of the advantages of regulating a gas that has an odor is that when it is present, it provides a warning because you can smell it. This makes complaint driven enforcement very reliable. Particulate matter or ozone require different forms of monitoring and enforcement because there is no automatic warning.

Director Allred pointed out that any facility permitted by DEQ already has requirements regarding odors and certain gases. However, the permits do not set a criteria by which you make a judgment about whether the level is too high. A process also exists for handling enforcement in situations where a health risk is suspected, but it is not a pleasant process for DEQ or the regulated facility. If a standard for hydrogen sulfide existed in these cases, it would clearly set out what is good and what is bad. He noted that even under the lower levels initially proposed, very few facilities would have been affected.

Don Chisholm asked if readings had been taken last year as high as 600 ppb and 1,500 ppb in Filer. Mr. Louks explained that those measurements were instantaneous readings taken with the Jerome meter (not the monitoring trailer) at the fence line of a single dairy.

Kate Kelly discussed the point of compliance issue and noted it would be reviewed more fully when the rule is presented in November. She emphasized the importance of the proactive element in the adoption of a hydrogen sulfide standard. DEQ currently has many tools such as permits to address certain situations, but having a hydrogen sulfide standard will not only help DEQ to address existing problems but will also help guide facilities when they are considering siting and constructing a new facility. There is an important proactive element to providing this kind of certainty and guidance to anticipated facilities that cannot be minimized.

Marti Calabretta requested the chronology of events on the hydrogen sulfide rulemaking show the wording of the motions, beginning with the February 2002 meeting.

Director Allred pointed out that DEQ has data available for facilities to review if they want to see how much hydrogen sulfide they are producing and how the proposed rule might affect them. DEQ would also be glad to conduct monitoring for any facility not previously visited to provide the information. The monitoring would be conducted as an assistance visit, not a compliance visit, and would be done as resources are available. He believed DEQ already has data for many of the facilities who have expressed concern. He reiterated it is DEQ’s impression that very few facilities would have a problem with the levels being proposed in the rule.

Chairman Chisholm called the formal Board meeting to order at 1:00 p.m. Dr. Joan Cloonan joined the meeting via conference call.

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 Chisholm opened the floor to public comments. He noted that this time is set aside to allow the Board to hear from the public on new issues that may be addressed by the Board or comment on matters under the jurisdiction of the Board. No comments were received.

AGENDA ITEM NO. 1: ADOPTION OF JUNE 4, 2002 MINUTES

- **MOTION:** Dr. Randy MacMillan moved the Board adopt the minutes of the June 4, 2002 Board meeting as prepared and distributed.
- SECOND:** Dr. Joan Cloonan
- VOICE VOTE:** Motion passed unanimously; 5 ayes; 2 absent (Marguerite McLaughlin, Nick Purdy).

AGENDA ITEM NO. 2: DIRECTOR’S REPORT

Director Steve Allred briefly reviewed the issues he discussed earlier in the meeting including the status of rulemaking on a standard for hydrogen sulfide and the Title V Program fees, the record of decision and operations in the Coeur d’Alene Basin, and the smoke management plan for northern Idaho.

AGENDA ITEM NO. 3 ELECTION OF OFFICERS

a. Chairman of the Board

Dr. Randy MacMillan nominated Paul Agidius as chairman. Dr. Joan Cloonan seconded the nomination.

- **MOTION:** Dr. Randy MacMillan moved the Board elect Paul Agidius by acclamation.
- SECOND:** Marti Calabretta
- VOICE VOTE:** Motion passed unanimously; 5 ayes; 2 absent (Marguerite McLaughlin, Nick Purdy).

b. Vice-chairman of the Board

Don Chisholm nominated Dr. Randy MacMillan as vice-chairman. Dr. Joan Cloonan seconded the nomination.

- **MOTION:** Dr. Joan Cloonan moved the Board elect Dr. Randy MacMillan by acclamation.
- SECOND:** Paul Agidius
- VOICE VOTE:** Motion passed unanimously; 5 ayes; 2 absent (Marguerite McLaughlin, Nick Purdy).

c. Secretary of the Board

Dr. Randy MacMillan nominated Marti Calabretta as secretary. Paul Agidius seconded the motion.

- **MOTION:** Dr. Joan Cloonan moved the Board elect Marti Calabretta by acclamation.
SECOND: Dr. Randy MacMillan
VOICE VOTE: Motion passed unanimously; 5 ayes; 2 absent (Marguerite McLaughlin, Nick Purdy).

Don Chisholm congratulated Paul Agidius and thanked the Board for the honor and opportunity to serve as chairman of the Board. He will continue to share new perspectives as a member of the Board. Paul Agidius assumed the role of chairman.

AGENDA ITEM NO. 4 APPROVAL OF HEARING OFFICER APPLICANTS

Paula Gradwohl presented a list of the applicants and resumes for the Board's approval. Don Chisholm asked if the Department had a recommendation on the applicants. Doug Conde, Deputy Attorney General for DEQ, stated he reviewed the applications and resumes of all the applicants and they all far exceed the minimum requirements of five years experience and experience in civil administrative litigation and proceedings. He believed they were all fine candidates and would do a good job as hearing officers.

Don Chisholm indicated he had dealt with Jeffery Wilson for over 20 years and recently handling a matter for him. He expressed his respect for his legal ability and added that he has acted as a hearing officer for the Board of Medicine and some other state agencies. He stated Mr. Wilson was unable to submit a resume in time for the Board's review, but vouched for his qualifications to serve as a hearing officer. Mr. Chisholm clarified that the legal work he performed for Mr. Wilson was a minor matter and was completed and should not create any conflict of interest.

- **MOTION:** Don Chisholm moved the Board approve the entire list of hearing officer applicants as submitted with Jane E. Spencer, Philip R. Miller, Kelly Kumm, Lynn M. Luker, Mack A. Redford, Jeffrey M. Wilson, and Thomas B. Dominick.
SECOND: Dr. Randy MacMillan
VOICE VOTE: Motion passed unanimously; 5 ayes; 2 absent (Marguerite McLaughlin, Nick Purdy).

AGENDA ITEM NO. 5 RULES FOR ORE PROCESSING BY CYANIDATION, DOCKET NO. 58-0113-0201 (PENDING RULE)

AGENDA ITEM NO. 6 WASTEWATER-LAND APPLICATION PERMIT RULES, DOCKET NO. 58-0117-0201 (PENDING RULE)

Paula Gradwohl, Administrative Rules Coordinator for DEQ, explained the dockets on both agenda item 5 and 6 are housekeeping items and this rulemaking is being done to change the number of days to respond to a notice of intent to revoke permit from 20 to 35 days for consistency with the Rules of Administrative procedure Before the Board of Environmental

Quality, IDAPA 58.01.23. An opportunity to provide public comment was provided, and DEQ received no comments on either rule.

➤ **MOTION:** Marti Calabretta moved the Board adopt the Rules for Ore Processing by Cyanidation as presented in the final proposal under Docket No. 58-0113-0201.

SECOND: Dr. Randy MacMillan

VOICE VOTE: Motion passed unanimously; 5 ayes; 2 absent (Marguerite McLaughlin, Nick Purdy)

➤ **MOTION:** Marti Calabretta moved the Board adopt the Wastewater-Land Application Permit Rules as presented in the final proposal under Docket No. 58-0117-0201.

SECOND: Don Chisholm

VOICE VOTE: Motion passed unanimously; 5 ayes; 2 absent (Marguerite McLaughlin, Nick Purdy)

AGENDA ITEM NO. 7 **WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS, DOCKET NO. 58-0102-0203 (TEMPORARY RULE)**

David Mabe, Administrator, Idaho Water Quality Program, advised the issue of the water effects ratio for the city of Boise in its discharge into the Boise River has been resolved with EPA. As a result, this rulemaking is not necessary and is being withdrawn. Board members agreed to the requested action.

AGENDA ITEM NO. 8 **WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS, DOCKET NO. 58-0102-0205 (TEMPORARY RULE)**

David Mabe explained this rulemaking is a result of the petition from the Idaho Association of Commerce and Industry. This rulemaking adds a section to identify the procedures to determine how to calculate values for the effluent concentration, background concentrations of pollutants in the receiving water and hardness values of the receiving water. These values are then used in calculations to determine if permit limits are necessary and what permits limits should be used to assure that ambient water quality is protected. This issue has been the subject of controversy in recent NPDES permits and the rule is necessary to assert the state's interpretation of its water quality standards.

This matter was discussed at the June 20, 2002 Board meeting and it was hoped the issue would be resolved in negotiations with EPA. The City of Boise used the new water effects ratios to prepare the calculations and permit amendments based on the existing procedures and submitted them to EPA. EPA indicated it would act on request within six weeks. It is hoped they will issue a positive response indicating they have reviewed the reasonable potential to exceed calculations and no permit limits will be necessary. Unfortunately, the EPA was unable to complete its review prior to the Board meeting. Therefore, DEQ is requesting the Board adopt the method of calculating the input numbers for the reasonable potential to exceed process to be used if necessary for the City of Boise in its permit renewal.

The rule went out for public comment and two sets of comments were received; one from EPA and one from the City of Boise. The City of Boise is supportive of the process and the rule.

EPA has some concerns with the process (see Attachment 1 for full comments). EPA feels this is not the process or venue to hold this discussion. DEQ concurs and would rather address it in the NPDES delegation discussions as the process the State of Idaho would like to use. Unfortunately, the permit considerations for the City of Boise do not allow the matter to continue to wait. The second concern EPA expressed is that these rules are part of the permitting process, not the water quality standards. EPA feels that as the permitting entity, they should have the ability to issue the rules and procedures used in the permitting process. The State feels it should have the prerogative to calculate the methods to help determine whether or not a permit limit will be necessary in the NPDES process.

➤ **MOTION:** Marti Calabretta moved the Board adopt as temporary rules the Water Quality Standards and Wastewater Treatment Requirements as presented under Docket No. 58-0102-0205 with an effective date of August 7, 2002. This motion recognizes the typographical corrections discussed in the meeting.

SECOND: Dr. Randy MacMillan

DISCUSSION: Don Chisholm expressed his concern about adopting rules or procedures that are less stringent than EPA requires. He feared it might send a message to the regulated community and cause them to make decisions that later would be expensive for them to correct. He urged DEQ and the Board to be cautious when adopting rules that are less stringent than what EPA requires.

VOICE VOTE: Motion passed unanimously; 5 ayes; 2 absent (Marguerite McLaughlin, Nick Purdy).

AGENDA ITEM NO. 9

STATUS REPORT ON INITIATION OF RULEMAKING FOR RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO, DOCKET NO. 58-0101-0204

Kate Kelly, Administrator, Idaho Air Quality Program, stated no action is requested on the rulemaking at this time. She briefly reviewed the status of the rulemaking. A draft rule has been submitted to the Department of Administration for publication in the Administrative Rules Bulletin in September 2002. A 30-day public comment period will follow in September. DEQ will then process the comments and develop a final rule for presentation to the Board at its November 2002 meeting as a proposed rule. If adopted by the Board the rule will go to the legislature for approval, and if approved, will be effective at the end of the legislative session.

Chairman Agidius requested that since no action is being taken at this time, public testimony be reserved for the public comment period and hearings that will be conducted in September.

Dick Rush, IACI, submitted written comments on the proposed rule (Attachment 5). IACI requests that the DEQ and the Board postpone promulgating rules for hydrogen sulfide and recommends that the Board refer this issue to the Environmental Common Sense Committee.

AGENDA ITEM NO. 10

CONTESTED CASE AND RULE DOCKET STATUS REPORTS

Paula Gradwohl, Administrative Rules Coordinator, reviewed the upcoming rulemaking schedule. Approximately ten dockets will be brought to the Board in both the October and November meetings. Ms. Gradwohl reviewed the status of the contested cases before the Board.

Doug Conde discussed the status of the contested case on the relicensing of the C. J. Strike Hydroelectric Facility.

➤ **MOTION:** Don Chisholm moved the Board set the oral argument on the contested case on the Relicensing of the C. J. Strike Hydroelectric Facility for September 10, 2002 at 10:00 a.m. at the DEQ state office in Boise, Idaho; and that the Chairman advise the participants that they will be limited to a one-half hour presentation.

SECOND: Dr. Randy MacMillan

VOICE VOTE: Motion passed unanimously; 5 ayes; 2 absent (Marguerite McLaughlin, Nick Purdy)

The Board will have 56 days to issue a decision following the oral argument. The full Board will act as hearing officer. Harriett Hensley, Deputy Attorney General, will serve as legal counsel for the Board. The oral argument will be the only agenda item scheduled for the meeting on September 10, 2002.

AGENDA ITEM NO. 11 **RESOLUTION IN SUPPORT OF A STATE ENVIRONMENTAL LONG-RANGE STRATEGIC PLAN**

Larry Koenig, Administrator, State Planning and Special Projects, discussed the draft memorandum and legislative concept to Governor Kempthorne from the Board asking for his support of legislation to develop a statewide long-range environmental plan. (Attachment 6).

Director Steve Allred mentioned that by using a memorandum instead of a resolution, the Board would not necessarily be going on record with regard to a position, but rather making a suggestion to the Governor as to how to proceed to develop an environmental plan. He suggested that a memorandum or letter and the legislative concept could be sent to the Governor at any time, or it could be included as part of DEQ's legislative package to the Governor's office for the upcoming session. He felt a resolution was not necessary, and a communication to the Governor with a recommendation or suggestion such as the attached draft memorandum would be appropriate.

Chairman Agidius questioned the wording "Add to the board's duties in IC § 39-107:" in the legislative content language. He feared it might be viewed as an effort to expand the Board's authority. Larry Koenig explained the legislative content language was drafted to show how it could be functionally carried out and where it would lie within the framework of the law. It will add the responsibility to the Board, but the language will indicate that the effort will be conducted with the consultation of affected state and local agencies and will recognize other existing state plans.

Don Chisholm stated the Board should also consider the cost to develop the plan. Mr. Chisholm recently addressed the Senate Health and Welfare Committee regarding the concept of a statewide long-range environmental plan. He stated the comments received recognized his concerns that many actions taken by different state agencies create conflicts and inconsistencies. Everyone needs to support and take part in the development of the plan to resolve such issues and have full cooperation. Mr. Chisholm suggested it might also be useful to discuss the concept of a statewide long-range environmental plan with the Environmental Common Sense Committee.

Mr. Chisholm felt the issue of timing and whether the memo supporting a statewide long-range environmental plan should also be sent to other agencies when it is sent to the Governor, or perhaps prior to being sent to the Governor to gain their input. Director Allred indicated that if the Board were to approve the draft memo, he would first meet with the Governor to discuss the matter. After the Governor's office has reviewed the matter, they will indicate whether or not they support the proposal, or the Governor may pick it up as one of his initiatives. Director Allred felt the best possible outcome would be for the Governor to handle it as one of his initiatives. The Governor would then drive the legislation and direct DEQ to prepare it. Board members may also wish to discuss the matter directly with the Governor to express their support.

Marti Calabretta suggested Paul Agidius and Don Chisholm meet with the Governor's staff and then the Governor to discuss the matter. Larry Koenig indicated that some staff in the Governor's office were already aware of DEQ's interest in developing a long-range plan and were very interested in the meetings held around the state to gain input. DEQ briefed the Governor's office on the matter and advised them that this issue may be coming to them. No negative reactions have been received at this point.

Tim Hurst, Cassia County Administrator and Zoning Administrator, addressed the Board regarding his concerns about communication between the counties and the state. They have worked closely with DEQ on other issues such as the swine and poultry rules and were very impressed with the level of cooperation they received. However, some county officials are concerned that the counties are sometimes treated as any other member of the public. They would like to be treated as partners with the state in implementing the laws, rules and regulations. Many of the actions taken by state departments directly affect the counties, and sometimes enforcement is left up to the counties. He urged that the lines of communication be kept open and the counties not be left out of the information loop.

Paul Agidius suggested he, Don Chisholm and Director Allred meet with the Governor to discuss the letter and legislative concept supporting the development of a statewide long-range environmental plan. The Board members concurred with the Chairman's suggestion. A time will be scheduled for the meeting, and Chairman Agidius will report back to the Board. The letter will be sent in advance of the meeting to allow the Governor time to review the matter. Dr. Joan Cloonan suggested the language in the legislative concept be tightened up to clarify exactly what the Board is requesting, why it is needed, and how it should be done. Chairman Agidius agreed and directed staff to work with him, Don Chisholm and Dr. Cloonan to revise the language. The amended language will be circulated to all Board members for their review prior to being sent to the Governor's office. The Board members concurred.

AGENDA ITEM NO. 12

LOCAL REPORTS AND ITEMS BOARD MEMBERS MAY WISH TO PRESENT

Marti Calabretta briefly discussed the upcoming record of decision from EPA regarding activities in the Coeur d'Alene Basin separate from the Superfund Box. A tremendous amount of work and strategy was done by Director Allred to ensure the maximum amount of local input and that the projects will be guided primarily by the state. She stated there is continuing concern regarding the inclusion of Lake Coeur d'Alene in the Record of Decision. The lake is known to have some of the best water quality in the state and is a tremendous asset to the area. There is great resistance to having the lake even mentioned in the ROD. Ms. Calabretta expressed her appreciation for actions taken to minimize activities outside of the box in the new ROD, and

stressed her objection to the inclusion of Lake Coeur d'Alene in the ROD. It is unclear to the people in the area how it will impact their timber industry and other management practices.

Director Allred stated it is EPA's contention that the lake will remain in the ROD because it is where contamination from the facility came to rest. Short of a Supreme Court lawsuit, this is something that cannot be changed. There is an administrative process to "delist" an area from a Superfund action. The state's goal is to have the lake automatically delisted when the Lake Management Plan is adopted.

Dr. Joan Cloonan announced she would be retiring from her position with the J. R. Simplot Company on September 27, 2002.

AGENDA ITEM NO. 13 BOARD DEVELOPMENT ISSUES

Don Chisholm pointed out that the Board may have two positions open after November if Marti Calabretta and Joan Cloonan are elected to serve in the legislature. Board members may want to consider what talents and qualifications they feel are valuable for a board member and make a recommendation to the Governor. He suggested they consider the issues facing the Board and what might help the round out the perspective of the Board in dealing with those issues.

The meeting adjourned at 4:00 p.m.

Paul C. Agidius, 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.