



State of Idaho
DEPARTMENT OF ENVIRONMENTAL QUALITY
BOARD OF ENVIRONMENTAL QUALITY

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IDAHO BOARD OF ENVIRONMENTAL QUALITY

MINUTES

October 7, 2009

The Board of Environmental Quality convened on October 7, 2009, at 9 a.m. at:

**Department of Environmental Quality
Conference Center
1410 N. Hilton
Boise, Idaho**

ROLL CALL

BOARD MEMBERS PRESENT

Craig Harlen, Chairman
Nick Purdy, Vice-Chairman
Kermit Kiebert, Secretary
Donald J. Chisholm, Member
Dr. Joan Cloonan, Member
Dr. John R. "Randy" MacMillan, Member
Carol Mascareñas, Member

BOARD MEMBERS ABSENT

None

DEPARTMENT OF ENVIRONMENTAL QUALITY STAFF PRESENT

Toni Hardesty, Director
Curt Fransen, Deputy Director
Courtney Beebe, Deputy Attorney General, DEQ
Martin Bauer, Administrator, Air Quality Division
John Brueck, Hazardous Waste Regulation & Policy Coordinator
Barry Burnell, Administrator, Water Quality Division
Jess Byrne, Intergovernmental Affairs Coordinator
Ester Ceja, Senior Water Quality Analyst
Debra Cline, Management Assistant to the Board
Douglas Conde, Senior Deputy Attorney General, DEQ
Darrell Early, Deputy Attorney General, DEQ
Don Essig, Water Quality Standards Coordinator
Orville Green, Administrator, Waste Management & Remediation Division
Susan Hamlin, Deputy Attorney General, DEQ
Lisa Kronberg, Deputy Attorney General, DEQ
Paula Wilson, Rules Coordinator

OTHERS PRESENT:

Pat Barkley, Idaho Council on Industry & Environment (ICIE)
Jim Brandon, Environmental Systems Products (ESP)
Al Freeman, Private Citizen, Canyon County
Charles Johnson, Private Citizen, Canyon County
Alex LaBeau, Idaho Association of Commerce & Industry (IACI)
Jayson Ronk, IACI
Lynn Tominaga, Idaho Rural Water Association (IRWA)
Joel Unverzagt, ESP
Jane Wittmeyer, Wittmeyer & Associates LLC
David Zaremba, Air Quality Board, Ada County

- ❖ 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 Management Assistant at (208) 373-0465.

PUBLIC COMMENT PERIOD

Chairman Craig Harlen opened the floor to public comments on topics not specifically included on the agenda. Charles Johnson, a private citizen from Canyon County, addressed the Board regarding his concerns that DEQ did not appeal wildfire events to EPA so wildfire smoke would not be considered when EPA is determining whether the Treasure Valley is in nonattainment of air quality standards. He believes there would be no risk of nonattainment if the wildfire events were flagged and appealed to EPA. He distributed a number of articles, letters, and reports (Attachment 1) in support of his claim. Chairman Harlen thanked Mr. Johnson for his comments and said the Board would contact him if any action were taken.

AGENDA ITEM NO. 1: DIRECTOR'S REPORT

Toni Hardesty, Director, updated the Board on the following issues:

- DEQ received an additional 7.5% budgetary holdback. When added to previous budget cuts, the FY2010 budget is now 22.5% less than the FY2009 budget. DEQ is still working to find ways to meet the new cuts.
- East Mission Flats has been approved by EPA for use as a repository site for the Coeur d'Alene Superfund area.
- DEQ will publish the notice of rulemaking for the mercury rule today. The first negotiated rulemaking meeting will be October 28, 2009.
- The Stage One Vapor Recovery program has reimbursed gas stations for retrofitting 35 gasoline storage tanks and four trucks. There are 38 remaining gas stations that DEQ hopes to be able to assist. The 50% matching funds are available to stations that complete the retrofits before the May 2010 regulatory deadline.
- DEQ will submit five pieces of legislation in the upcoming session. All five items are "housekeeping" matters.

AGENDA ITEM NO. 2: ADOPTION OF MEETING MINUTES

a. July 29, 2009

- **MOTION:** Don Chisholm moved the Board adopt the minutes for the July 29, 2009, meeting as presented.
SECOND: Dr. John MacMillan
VOICE VOTE: Motion carried by unanimous voice vote.

AGENDA ITEM NO. 3: RULES AND STANDARDS FOR HAZARDOUS WASTE, DOCKET NO. 58-0105-0901 (PENDING RULE) (Update of federal regulations incorporated by reference)

Orville Green, Administrator, DEQ Waste and Remediation Division, said this rule is the annual adoption by reference needed to maintain consistency with the U.S. Environmental Protection Agency (EPA) federal hazardous waste regulations. The rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations. No comments were received on the rules. Mr. Green reviewed the four amendments in the proposed rule.

- **MOTION:** Dr. MacMillan moved the Board adopt the Rules and Standards for Hazardous Waste as presented in the final proposal under Docket No. 58-0105-0901.
SECOND: Dr. Joan Cloonan
VOICE VOTE: Motion carried unanimously.

AGENDA ITEM NO. 4: WASTEWATER RULES, DOCKET NO. 58-0116-0802 (PENDING RULE) (Rulemaking to allow for the creation of a combined very small wastewater treatment and collection system classification)

Barry Burnell, Administrator, Water Quality Division, presented a brief overview of the rule. He said this rule was adopted by the Board in February 2009 as a temporary rule and is in effect now. DEQ has been working with the Idaho Bureau of Occupational Licenses (IBOL) to develop a companion rule for the licensure of very small wastewater system operators. The rule was published today in the Administrative Rule Bulletin.

Ester Ceja, Senior Water Quality Analyst, explained the details of the rule. She said this rulemaking provides a very small wastewater system classification and will assist small wastewater systems in achieving compliance with licensed public wastewater requirements. Operators struggle with obtaining the various licenses currently required for the different aspects of very small facility operation, and this difficulty in obtaining more than one license results in there being too few properly licensed operators. Smaller systems, due to their relative simplicity of operation, are good candidates for operation by individuals with combined licenses.

Ms. Ceja said there were no controversial issues in the rulemaking and no public comments were received.

Lynn Tominaga, Idaho Rural Water Association (IRWA), thanked DEQ and IBOL for considering the reduction in requirements for very small wastewater and drinking water systems.

He said this combination of licensing requirements will make it much easier for small communities, especially those that serve populations of 5,000 or fewer people, which accounts for over 90% of the small community systems throughout Idaho. One remaining issue of concern the IRWA wants to bring to the attention of the Board is a licensing issue that happens when a small drinking water system is reclassified from Class 1 to Class 3 because of growth and/or increasing EPA requirements for treatment of wastewater and drinking water. It is very difficult for small communities to hire an operator with a Class 3 license, which requires an additional 1800 hours of experience over three years. DEQ works with the systems by using compliance schedules so they can have an operator. But if they run into problems meeting the compliance schedule, they can be fined, lose eligibility for loans, and come under other burdensome requirements. IRWA hopes to be able to work with DEQ and IBOL to find a better transition process when these systems change classes.

Mr. Burnell discussed ways small systems can take action in advance to be prepared for upgrades in classification and operator licensing requirements including having an operator with a license one class higher than the system and substituting education for some of the hours of experience.

Mr. Tominaga said he appreciates working with Mr. Burnell and hopes the lines of communication stay open between DEQ and IBOL to resolve such issues.

- **MOTION:** Dr. Cloonan moved the Board adopt the Wastewater Rules as presented in the final proposal under Docket No. 58-0116-0802.
- SECOND:** Carol Mascareñas
- VOICE VOTE:** Motion carried unanimously.

AGENDA ITEM NO. 5: RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO, DOCKET NO. 58-0101-0901 (PENDING RULE) (Rulemaking to establish the minimum requirements for a vehicle inspection and maintenance program)

Martin Bauer, Administrator, DEQ Air Quality Division, presented the vehicle emissions testing minimum requirements rule. He said this rulemaking was necessary because Idaho Code § 39-116B, based on legislation proposed by the Treasure Valley Air Quality Council, requires DEQ to establish minimum criteria for a vehicle inspection and maintenance program for any airshed that has ambient air quality concentrations at or above 85% of a national ambient air quality standard, and air pollution from vehicles constitutes one of the top two emission sources contributing to the concentrations.

Mr. Bauer said two negotiated rulemaking meetings were held which included representatives from Canyon and Ada counties and cities, interested citizens, vendors, environmental groups, and Kootenai county representatives. The Treasure Valley's current ozone design value is at the standard and vehicles are one of the top two emission sources for both nitrogen oxides (NOx) and volatile organic compounds (VOCs). The statute requires that emissions testing costs not exceed \$20 per vehicle for testing no more than once every two years.

Regarding the stringency issue, Mr. Bauer said the proposed rule does not regulate an activity not regulated by the federal government, nor is it more stringent than the federal regulations. The Clean Air Act requires a vehicle inspection and maintenance program in marginal ozone nonattainment areas. The proposed rule is broader in scope, however, than the federal law as it

applies to sources in an area not yet designated nonattainment. In addition, this rule is required by Idaho Code § 39-116B.

Mr. Bauer provided a summary of the actions leading up to the rule, the status of where DEQ is on the program, and a brief discussion of the specifics of the rule. He said once DEQ determined Ada County had an ozone design value of 85% of the standard and that vehicles were one of the top two sources, DEQ performed modeling to determine which counties in the Treasure Valley had the largest contribution due to vehicle emissions. Results show that Ada County has about 68% contribution; Canyon County about 24% contribution; Gem County about 1.2% contribution; Elmore County about 4.5% contribution; and the remaining counties of Payette, Boise, and Owyhee less than 1% contribution. For this reason, the program has been limited to Canyon and Ada counties only and all their incorporated cities.

In April 2009, all affected cities and counties were issued a letter outlining the options listed in the statute:

- 1) To enter into a joint powers agreement and run the program themselves.
- 2) To implement an alternative motor vehicle emission control strategy that would result in emissions reductions equivalent to that of a vehicle emissions inspection program.
- 3) To not respond or do anything, or if they submitted an alternative program and it did not meet the requirements of the statute, and have DEQ or its designee operate the program.

DEQ received the following responses from the cities and counties notified in April:

- Canyon County, Wilder, Caldwell, Nampa, and Middleton responded by choosing option No. 2, the alternative program.
- Ada County, Boise, Garden City, and Meridian chose option No. 1 and would like to enter into a joint powers agreement with DEQ.
- Greenleaf and Parma submitted a response choosing option No. 3, to allow DEQ or its designee to implement the program.
- Eagle, Kuna, Melba, Notus, and Star did not submit a response.

Mr. Bauer said DEQ analyzed the alternative programs proposed by the cities and counties, and though commendable for their efforts to reduce air pollution, they did not meet the equivalent reductions that a vehicle emissions reduction program would achieve in that area. DEQ intends to enter into a joint exercise of powers agreement with the cities of Boise, Garden City, and Meridian, and Ada County. It may be that the designated entity responsible for the program in that agreement will handle all the other cities in Ada County. DEQ is currently drafting a request for proposal for implementation of a vehicle inspection and maintenance program in Canyon County and potentially the city of Kuna.

Mr. Bauer responded to the Board's questions regarding administration, enforcement, and costs of operating the emission testing program. Carol Mascareñas asked if the entities that chose to develop an alternative program were provided with guidance and examples. Mr. Bauer said the Treasure Valley Air Quality Council's plan included a very good matrix of best management practices and reductions, which were scaled on the best reduction for the least amount of money. The plan was provided to the entities to give them an idea of the kind of reductions they could use.

Jim Brandon, Environmental Systems Products, said his company has a number of vehicle emission testing programs throughout the United States including a major program in Colorado. The programs use remote sensing to identify high emitters and smoking vehicles. Mr. Brandon explained the details of the programs and believes his company's product would be very beneficial to the Treasure Valley. The testing equipment on the company's vans (sometimes referred to as "smog dog technology") can test a vehicle within a fraction of a second for hydrocarbon, carbon monoxide (CO) and NOX. It can also identify vehicles coming in from out of the area. The vans are parked in high-traffic areas and freeway on and off ramps. The program is not involved in enforcement; it simply collects data and identifies high emitters through their license plate numbers. Mr. Brandon said his company would be happy to submit a bid if a request for proposal were issued. Mr. Brandon responded to technical questions from the Board.

Al Freeman, Canyon County citizen, addressed the Board (see Attachment 2 for full comments) regarding his concerns that the data being used to support the proposed rule is inaccurate, incomplete, and out-of-date. He believes there is no legal basis for forcing Canyon County to implement vehicle emissions testing. He asked the Board to deny approval of the proposed rule.

Charles Johnson, Canyon County citizen, spoke against the proposed rule (see Attachment 3 for full comments and handouts) and distributed a number of documents including copies of letters, charts, satellite images of wildfire smoke, reports, and meeting minutes in support of his statements. He believes peer-reviewed science does not support emission testing. He again said he did not understand why DEQ did not appeal wildfire events to EPA so the wildfire smoke would not be considered when EPA is determining whether the Treasure Valley is in nonattainment of air quality standards. He requested the Board deny the proposed rule.

David Zaremba, Air Quality Board, Ada County, spoke in support of the proposed rule. At recent meetings, the Air Quality Board reviewed the findings of the Treasure Valley Air Quality Council, fully supports those findings, and believes both the science and logic are correct. The Air Quality Board plans to make changes to its program to comply with findings and recommendations of the TVAQC. Some of those changes will include switching from annual testing to every-other-year testing and not testing vehicles until they are four or five years old. Mr. Zaremba is also a city councilman for the city of Meridian and as such is very concerned about the economic impact of allowing EPA to declare nonattainment. He believes the other areas in the Treasure Valley must join Ada County in its efforts to improve air quality by implementing vehicle emission testing now. He does support investigating new technology and some of the different programs being discussed, but feels immediate action is needed to make sure nonattainment is avoided. He thinks the proposed rule is the quickest way to achieve that goal and asked the Board to approve the proposed rule.

➤ **MOTION:** Dr. Cloonan moved that the Board adopt the Rules for the Control of Air Pollution in Idaho as presented in the final proposal under Docket No. 58-0101-0901.

SECOND: Dr. MacMillan

VOICE VOTE: Motion carried by unanimous voice vote.

AGENDA ITEM NO. 6: RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO, DOCKET NO. 58-0101-0902 (PENDING RULE) (Rulemaking to allow fuel burning sources the ability to use higher sulfur content fuels so long as there is no additional environmental impact)

Martin Bauer explained DEQ initiated this rule to allow industries a less expensive alternative to current fuels with no additional environmental impact. The revisions included in this proposed rule allow for higher sulfur content fuels to be used in fuel burning equipment as long as the resulting emissions are at levels equal to or lower than those provided for in the existing rules. Negotiated rulemaking was conducted, and there were no controversial issues. The rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations. Mr. Bauer reviewed the details of the rule and responded to Board member questions.

- **MOTION:** Don Chisholm moved the Board adopt the Rules for the Control of Air Pollution in Idaho as presented in the final proposal under Docket No. 58-0101-0902.
- SECOND:** Dr. Cloonan
- VOICE VOTE:** Motion carried by unanimous voice vote.

AGENDA ITEM NO. 7: RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO, DOCKET NO. 58-0101-0903 (PENDING RULE) (Update of federal regulations incorporated by reference)

Martin Bauer said this rule is a routine annual incorporation by reference of the federal regulations promulgated as of July 1, 2009. This rulemaking is necessary to ensure the Idaho Rules for the Control of Air Pollution in Idaho are consistent with federal regulations. The proposed rule updates citations to federal regulations incorporated by reference at Sections 008 and 107. A public comment period and hearing were held, and no comments were received. There is no additional cost to the regulated community due to this rule, and there are no stringency issues.

- **MOTION:** Dr. MacMillan moved the Board adopt the Rules for the Control of Air Pollution in Idaho as presented in the final proposal under Docket No. 58-0101-0903.
- SECOND:** Don Chisholm
- VOICE VOTE:** Motion carried by unanimous voice vote.

AGENDA ITEM NO. 8: CENTRAL DISTRICT HEALTH DEPARTMENT'S PROPOSED RULE DOCKET NOS. 41-0402-0901 AND 41-0403-0901 (submitted to the Idaho Board of Environmental Quality for informational purposes only; submitted to the Idaho Board of Health and Welfare for review pursuant to Idaho Code § 39-416(3))

Doug Conde, Senior Deputy Attorney General, DEQ, explained that these rules are before the Board as a matter of courtesy. Under current law if a public health district adopts a rule, regardless of whether that rule relates to environmental quality programs, the rule goes before the Idaho Board of Health and Welfare. The law provides that within 75 days of receipt, the IBHW shall disapprove of adoption of the rules if, on advice of the attorney general, such rules

would be in conflict with state laws or rules. The goal is to ensure consistent rules between the state and the health districts. This process made sense when DEQ was a division of the Department of Health and Welfare, but does not work well now. DEQ plans to propose legislation to change the law so that public health district rules pertaining to environmental protection programs, or programs that are administered by DEQ, come before the Board of Environmental Quality for review. The Board of Environmental Quality would then have the obligation to disapprove of those rules if, on advice of the attorney general, they conflict with state rules.

AGENDA ITEM NO. 9: CONTESTED CASE AND RULE DOCKET STATUS REPORT

Paula Wilson reviewed the current contested case and rule docket status report. She said the mercury rulemaking will begin on October 28, and information will be posted on DEQ's Web site. An additional rule regarding drinking water loan fees is not listed on the report because it had not yet been approved by the governor's office at the time the report was prepared. It has now received approval as a temporary rule and will come before the Board's November 2009 meeting.

AGENDA ITEM NO. 10: ELECTION OF BOARD OFFICERS

Chairman Harlen opened the floor to nominations.

➤ **MOTION:** Dr. MacMillan nominated Craig Harlen as chairman, Nick Purdy as vice-chairman, and Kermit Kiebert as secretary.

SECOND: Carol Mascareñas

VOICE VOTE: Motion carried by unanimous voice vote.

AGENDA ITEM NO. 11: LOCAL REPORTS AND ITEMS BOARD MEMBERS MAY WISH TO PRESENT

The Board scheduled the next meeting for Thursday, November 12 at 10 a.m. MST. The meeting will be conducted via conference call. A speaker phone will be set up at the DEQ state office conference center to allow the public to participate.

The meeting adjourned at 1:35 p.m.

/s/

Craig D. Harlen, Chairman

/s/

Kermit V. Kiebert, Secretary

/s/

Debra L. Cline, Management Assistant and Recorder