



State of Idaho
DEPARTMENT OF ENVIRONMENTAL QUALITY
BOARD OF ENVIRONMENTAL QUALITY

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IDAHO BOARD OF ENVIRONMENTAL QUALITY

MINUTES

May 17, 2005

The Board of Environmental Quality convened on May 17, 2005 at 9:30 a.m.
at:

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

ROLL CALL

BOARD MEMBERS PRESENT

Dr. John R. "Randy" MacMillan, Chairman
Dr. Joan Cloonan, Vice-chairman
Craig Harlen, Secretary (joined meeting via telephone at 9:37 a.m.)
Marti Calabretta, Member (via telephone)
Donald J. Chisholm, Member
Nick Purdy, Member
Marguerite McLaughlin, Member (via telephone)

BOARD MEMBERS ABSENT

None

DEPARTMENT OF ENVIRONMENTAL QUALITY STAFF PRESENT

Toni Hardesty, Director
Jon Sandoval, Chief of Staff
Martin Bauer, Administrator, Air Quality Division
Garrick Baxter, Deputy Attorney General
Debra Cline, Management Assistant to the Board
Douglas Conde, Deputy Attorney General
Harriet Hensley, Deputy Attorney General (via telephone)
Orville Green, Administrator, Waste & Remediation Division
Sharon Keene, Customer Resources Team Leader
John Lawson, Mine Waste Program Scientist
Mike Simon, Compliance Analyst, Air Quality Program
Paula Wilson, Rules Coordinator

OTHERS PRESENT:

Rocky Barker, Idaho Statesman
Roger Furner, private citizen
Justin Hayes, Program Director, Idaho Conservation League
Teresa Hill, Stoel Rives LLP
Dick Rush, Idaho Association of Commerce & Industry

- ❖ All attachments referenced in these minutes are permanent attachments to the minutes on file at the Idaho Department of Environmental Quality. To obtain a copy, contact the Board assistant at (208) 373-0465.

CONTESTED CASE HEARING – IN THE MATTER OF SIMMONS SANITATION, DOCKET NO. 0106-05-01, ORAL ARGUMENT ON PETITIONER’S REQUEST FOR REVIEW, BY THE BOARD, OF THE HEARING OFFICER’S DECISION APPROVING SIMMONS SANITATION’S PETITION TO INTERVENE

NOTE: A full transcript of the hearing is available from the DEQ hearing coordinator’s office. Contact Paula Wilson at (208) 373-0418.

APPEARANCES

- Ken Jones, Petitioner
- Teresa Hill, Stoel Rives LLP, appeared on behalf of Simmons Sanitation
- Garrick Baxter, Deputy Attorney General, appeared on behalf of the Idaho Department of Environmental Quality, Respondent

Ken Jones argued that Simmons Sanitation should not be granted intervention in the matter of Ken Jones v. Idaho Department of Environmental Quality. He stated IDAPA regulations were not complied with because the legal description for the site of the proposed landfill was incorrect in the legal notice that was published. He asserted the permit issued by DEQ was not valid and due process was not followed because the permit did not have the correct description of the location of the proposed landfill. (Craig Harlen, Member, joined in the conference call at this point at 9:37 a.m.) Mr. Jones alleged that every document submitted by Simmons Sanitation regarding the proposed landfill in the Seven Mile Creek Drainage area had a different location listed, most of those locations do not even physically exist; and that the approved location listed as Highway 162, Milepost 4, is actually four miles out of Nez Perce, Idaho, is not even in the right county, and is miles away from the actual proposed site. Mr. Jones stressed that since the requirements of law were not satisfied; Simmons Sanitation did not hold a legal permit and therefore should not be granted intervention in the matter.

Teresa Hill argued in support of the hearing officer’s decision granting intervention to Simmons Sanitation. She pointed out that the only issue before the Board at this time is a review of the hearing officer’s grant of Simmons Sanitation’s Petition to Intervene in this matter. She stressed the Rules of Administrative Procedure before the Board specifically provide for intervention as a matter of right to the permit holder. This is precisely the situation contemplated under Rule 353 which allows a permit applicant or permit holder to intervene as a matter of right in any contested case in which that permit is contested. The Idaho Administrative Procedures Act and

the rules of the Board were designed specifically to allow people whose legal rights and interests are being decided through a contested case proceeding to be allowed to intervene in that proceeding and protect their rights and interests. Ms. Hill noted Mr. Jones did not challenge the intervention on any other basis, but focused on the legality of the permit itself. She maintained this is the underlying issue to be decided in the contested case proceeding, and Mr. Jones' challenge to it at this stage is premature. Ms. Hill asked the Board to uphold the hearing officer's decision to allow Simmons Sanitation to intervene so they could protect their interest in the proceeding.

Garrick Baxter agreed the sole issue before the Board is the intervention and whether or not Simmons Sanitation should be allowed to participate in the contested case proceeding. He noted Ken Jones' petition listed Simmons Sanitation as a respondent and made specific allegations. Simmons Sanitation should be allowed to stand before the hearing officer to defend their actions in this matter. He briefly discussed the notice procedure, stressing the issue was not before the Board at this time. He explained after the notice was originally published, it was determined by DEQ the notice needed to be republished. Simmons republished the notice with what DEQ believes is the proper legal description, which provided adequate public notice. Mr. Baxter contended there was adequate of legal notice and everyone was aware of where the proposed site is located. DEQ believes there was due process in the matter and it should be allowed to go before the hearing officer to resolve the issue.

Mr. Baxter stated DEQ supports the hearing officer's decision granting intervention to Simmons Sanitation. As a holder of a DEQ approved application, the Rules of Procedure before the Board allow Simmons Sanitation to intervene as a matter of right.

Don Chisholm asked if actions were taking place at the site based on the permit. Ken Jones responded the only action he had observed was some work at the beginning of the proposed access road, but it has stopped at this point. He was unsure whether construction was taking place at any of the other locations described in the documents. Mr. Chisholm asked if an actual legal description of the proposed site was attached to the permit. Mr. Baxter replied the correct legal description was republished to provide public notice, but was unaware if it was physically attached to the application. The correct full legal description came directly from the county assessors' office.

Nick Purdy wondered why there was a continuing disagreement over the issue of the legal description. He asked if a survey of the property was needed. Harriet Hensley, Board counsel, advised that these issues should be addressed in subsequent hearings. She stated the only matter before the Board at this time is whether Simmons Sanitation should be allowed to intervene in the case and urged the Board to focus on the intervention issue.

Don Chisholm commented it seemed clear Simmons Sanitation was entitled to take part in the proceedings to defend the permit that was granted by DEQ. The appropriate way to bring these issues to resolution is to allow intervention so the parties can argue the issues before the hearing officer.

➤ **MOTION:** Don Chisholm moved the Board uphold the decision of the hearing officer granting intervention to allow the parties to proceed to sort out the issues regarding the correctness of the legal description and the propriety of granting the permit.

SECOND: Dr. Joan Cloonan

DISCUSSION: Marti Calabretta stated she was in favor of the motion, but noted the questions she would like to see addressed in future proceedings were: How significant is the legal requirement of location description in the application process? Was an appropriate application and permit granted? Was the re-description of the property accurate and did the public notice allow for adequate time? And, does DEQ in fact know the location and have they done the necessary testing at that site?

ROLL CALL VOTE: Motion carried. Mr. Chisholm, aye; Dr. Cloonan, aye; Mr. Harlen, aye; Dr. MacMillan, aye; Ms. McLaughlin, aye; Mr. Purdy, aye; and Ms. Calabretta, aye.

Harriet Hensley said a proposed order had been prepared by Simmons Sanitation and circulated to the Board prior to the meeting. She recommended making some minor revisions to the proposed order. Chairman MacMillan directed Ms. Hensley to make necessary revisions and send the order to the Board for review and signature.

Don Chisholm explained to Mr. Jones that by voting in favor of intervention, the Board was not ruling on the merits of the case and he was free to proceed with his objections before the hearing officer. If Mr. Jones is aggrieved with the decision of the hearing officer, he may appeal that decision to the Board. The Board did not rule on the validity of the permit, it simply decided that procedurally it is right that Simmons Sanitation be allowed to participate to defend its position against his (Mr. Jones') complaint.

PUBLIC COMMENT PERIOD

No comments were received.

AGENDA ITEM NO. 1: ADOPTION OF BOARD MINUTES

a. February 8, 2005

➤ **MOTION:** Don Chisholm moved the Board approve the minutes of the February 8, 2005 meeting as presented.

SECOND: Dr. Joan Cloonan

VOICE VOTE: Motion carried. 7 ayes; 0 nays; 0 absent.

b. Review of Action Items

(1) Investigate the question of whether DEQ could balance cost versus environmental concerns when making decisions on permits.

Doug Conde reported he reviewed this matter and determined each individual permit program and each individual permit must be examined to see how the rules operate and whether they allow DEQ to take cost into consideration. There is no blanket answer. There may be the ability to balance cost and economics when there are different alternatives that meet the standards in the rules. Some rules have a variance procedure that allows consideration of widespread social and economic impact. DEQ probably has more discretion to consider economics when it is a state-only program; certain federal requirements do not allow the discretion to consider cost and must be based on science. The best approach may be to address the question when rulemaking is taking place and the requirements are established. DEQ can, as it has in the past, determine

whether there are alternative ways to protect the environment and human health, and balance economics when setting the requirements.

Marti Calabretta observed if there is any wisdom on a program-by-program basis that gives DEQ guidance, it would be valuable for the Board to be aware of it as a matter of course as the Board considers rules. She felt this was an important underlying question that should be in the Board's consideration as it evaluates the rules.

Chairman MacMillan agreed the best way to proceed would be to consider the issue of economics as the opportunity presents itself when a rule comes before the Board.

(2) Update on the actions of the ECSC Servicing Communities: Planning for the Future Subcommittee and Land Use Planning Act issues.

Jon Sandoval reported the Environmental Common Sense Committee (ECSC) met on May 10, 2005 and discussed area of impact, high growth areas, and the whole issue of how to find ways to complement the Land Use Planning Act with environmental considerations when it comes to infrastructure. The Subcommittee continues to look for answers to the questions that have developed around the state in areas such as the Treasure Valley, Coeur d'Alene, Post Falls, Hailey, and Sun Valley. As the cities grow, fence lines disappear, buffer zones disappear, and the need to find better ways to share infrastructure, conserve water, and address wastewater issues becomes more urgent.

As a solution, the ECSC requested the Association of Idaho Cities and the Idaho Association of Counties discuss this issue at their upcoming annual meetings. A number of forums were designed to educate local elected officials about how to find more collective ways to look at the Land Use Planning Act and environmental protection concerns. They hope to help the city and county officials find ways to work together to develop proactive solutions in terms of how to make more informed decisions about siting, development, and sharing infrastructures to assure access to wastewater treatment systems and public water supplies.

Marti Calabretta asked what interaction the Board had with the ECSC and if a Board member was assigned to the ECSC. Chairman MacMillan responded there was not a Board member officially assigned to the ECSC, but meetings are open to the public. All Board members currently receive mailings from the ECSC for meeting notices, agendas, and minutes.

(3) Contested Case Appeal Process – Should contested cases be record reviews? Gather input from stakeholders such as IACI, ECSC and germane legislative committees regarding how the current contested case appeal process functions to see if there is interest or support in revising the EPHA to make contested cases record reviews and make recommendations on how to proceed.

Doug Conde reported limited actions have been taken on this assignment due to the busy legislative session. He noted this effort will need the involvement of DEQ to promote a discussion of the issue.

Chairman MacMillan wondered whether this might be an issue the IACI Environmental Committee could look at to see if there is interest in pursuing this change. Dick Rush, IACI, stated there are a number of issues to be considered.

(4) Presentation reviewing the legal parameters of the guidance versus rule issue including the provisions of the APA and the Idaho Supreme Court.

Doug Conde updated the Board on actions DEQ has taken, with input from the Attorney General's office, to address the use of guidance. A memorandum was distributed to DEQ staff by Director Toni Hardesty regarding the use of guidance, how to write guidance documents, and how to distinguish between guidance and rule. A procedure has been established that outlines how guidance should be developed. It begins with obtaining legal advice from the Attorney General's office to ensure it should be developed as guidance and not a rule. The Attorney General's office is also including training in their annual workshops on how to distinguish between rules and guidance, so they will be prepared to provide advice to those who are writing rules and guidance documents.

Mr. Conde remarked the subject of rule versus guidance has gotten a lot of attention lately and believed the issue developed because of the way the Administrative Procedures Act (APA) is written. The Idaho Supreme Court looked at the definition of "rule" in the APA and said it is so broad, it is unworkable. The definition is so broad that technically, it could apply to almost everything DEQ does. It states a rule is, "an agency statement of general applicability that prescribes, interprets, or applies law, procedure, or policy of an agency." At the same time, the APA excludes from that definition "intra-agency interpretations of law or rules and statements or memorandum of how you comply with a rule or a law."

The APA also includes the authorization for agencies to develop guidance documents and includes a memorandum that describes the agency interpretation of law or rules. So there is some overlap between the definition of guidance and the definition of rule. The two main distinguishing factors between the two are, 1) only a rule can provide a legal standard, and 2) rules have general and uniform applicability, either statewide or within a region. A guidance document does not establish a legal standard and has to leave with the agency a site-specific discretion. In other words, you cannot develop a guidance document that would apply the same throughout the state with no discretion left to the agency to make a decision with respect to a particular permit or a particular issue.

The Attorney General's office is currently reviewing all DEQ's guidance documents to ensure they are properly written and checking to see if there are things being done in guidance documents that should be incorporated into rule. Mr. Conde stated the complete list of all guidance documents used by DEQ it is available on the DEQ Web site.

Dr. Joan Cloonan commented she is currently working with the committee that is updating the Land Application guidance document. The DEQ permit writers and other staff are extremely conscious of the issue of guidance versus rule. It is not an easy distinction to make at times, but the DEQ staff and others working on the project are very aware of the issue and it comes up regularly. There has been a lot of progress, but it is a difficult task that will take years and will need ongoing review. Doug Conde agreed the Land Application guidance is a good example of something that needs to be updated on an ongoing basis because the science is continually changing. It is appropriate to use a guidance document to allow the needed changes. It is important to build in the flexibility to allow consistency statewide, the need to avoid arbitrary decisions, and the ability to be flexible on site-specific situations.

Director Hardesty explained in addition to the memo laying out how guidance will be applied from here forward, DEQ is also going back and revising the old guidance. This process will obviously take longer as the attorneys and programs work through the documents. So for a time there will be older guidance on the DEQ Web site that does not adhere to the new standards put forward, but that will ultimately be revised. She stressed the development of all guidance will be an open process with opportunity for the public to comment and participate.

Nick Purdy commented he received many complaints regarding the inconsistency in how health districts apply guidance and rules. He asked if there was a way to get these new standards on the application of guidance versus rule down to the people who apply it on the ground. Director Hardesty responded there have been routine meetings between DEQ and the directors of the health districts to address such issues as inconsistencies throughout the state. She explained that each health district reports to their county commissioners, and often times they set different direction and expectations. It can be a challenge, but they are working toward consistency.

Craig Harlen noted he had heard similar complaints in his region, and requested the matter be discussed further at the next Board meeting.

AGENDA ITEM NO. 2: DIRECTOR'S REPORT

Director Toni Hardesty presented a legislative wrap-up of the 58th Idaho Legislative session and briefly discussed actions affecting DEQ.

DEQ received its budget appropriation and five new full time positions: one for the Coeur d'Alene Lake management implementation position, one for the Burlington Northern Santa Fe Railroad position, two for the Coeur d'Alene Basin Commission (an executive director and a clerical) which are funded by a federal grant, and one for the National Environmental Information Network Exchange. Only one position is funded through the general fund, the rest are from dedicated or federal funding.

A new contractor has been appointed for the Idaho National Laboratory (INL) cleanup. A consortium of CH2M Hill and Washington Group International (CWI) won the contract. A series of meetings has already taken place prior to their May 1 start date.

Director Hardesty stated FY06 is expected to be a very tight budget year for DEQ. Federal grants and programs have had significant budget cuts and those are passed down to the state agency. An example of a DEQ program seriously impacted by the cuts is the State Revolving Fund. This program lends money for infrastructure and has always had more qualified projects needing assistance than it could fund. This year the program will be able to fund less than 50% of the requests. Funding for the program is expected to be cut even more.

DEQ is moving forward with the Triennial Review process. The public scoping meetings are set for May 23 in Pocatello, May 24 in Boise, and May 26 in Moscow. There has been a lot of interest in the process and DEQ expects good participation at the meetings.

Marguerite McLaughlin asked if recent legislation had changed how burning permits would be handled on the Indian reservation. Director Hardesty was not aware of state changes, but stated EPA recently promulgated federal regulations for air quality standards on tribal grounds and reservation grounds. Ms. McLaughlin stated she has received questions and concerns regarding

how these changes will affect people living on the reservation. There is confusion as to how the state and federal regulations will coordinate. Director Hardesty offered to research the matter and report back to the Board.

AGENDA ITEM NO. 3: RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO, DOCKET NO. 58-0101-0501 (TEMPORARY RULE) (REVIEW OF TIER I OPERATING PERMIT APPLICATION DEADLINE FOR DEFERRED SOURCES)

Mike Simon, Stationary Source Program Manager, presented this docket to change the rule to allow deferred sources (area sources that are located at non-major facilities and are subject to federal regulations) to submit a Title V application only when the EPA has determined that those sources should submit a Title V application. The current rules require all deferred sources to submit a complete Title V operating permit application by June 1, 2005. EPA is currently considering five area sources to permanently exempt them from the Title V program; these are the dry cleaners, electroplaters, ethylene oxide sterilizers, halogenated solvent cleaners, and secondary aluminum production. Other sources such as rock crushers and small natural gas-fired steam boilers would also be exempt under this rule. In summary, the rule change would remove the requirement for area sources to submit an application by the June 1, 2005 deadline and would only require those area sources that EPA specifically requires to get an operating permit, to get an operating permit in Idaho. This rule would also require Title V permits as specified by EPA, and will allow DEQ to focus resources on compliance activities for major source permits.

These rule changes are consistent with the Clean Air Act and the Idaho law that requires state regulations to be no more stringent than federal requirements.

- **MOTION:** Dr. Joan Cloonan moved the Board adopt, as temporary rules, the Rules for the Control of Air Pollution in Idaho as presented under Docket No. 58-0101-0501 with an effective date of May 31, 2005.
- SECOND:** Don Chisholm
- ROLL CALL VOTE:** Mr. Chisholm, aye; Dr. Cloonan, aye; Mr. Harlen, aye; Dr. MacMillan, aye; Ms. McLaughlin, aye; Mr. Purdy, aye; and Ms. Calabretta, aye.

AGENDA ITEM NO. 4: STATUS REPORT ON RULES FOR ORE PROCESSING BY CYANIDATION, DOCKET NO. 58-0113-0501 (NEGOTIATED RULEMAKING)

John Lawson, DEQ Mine Waste Program Scientist, updated the Board on the status of the negotiated rulemaking DEQ is conducting in response to Senate bill 1169. The purpose of the legislation was to increase the amount of bond an operator is required to post with the state to operate a facility that uses cyanide to process ore. Existing law allows a maximum of \$100,000 bond per facility. Senate bill 1169 takes the bonding requirement from DEQ rules and places it with the Idaho Department of Lands (IDL) and raises the maximum bond to up to five million dollars with a provision to allow a higher bond, if necessary, through the Land Board.

DEQ is currently conducting the rulemaking for the temporary rule required by the legislation. As soon as that is completed, DEQ will begin negotiated rulemaking for the proposed rule. The issues presented in the Idaho Conservation League (ICL) petition to initiate rulemaking for the Ore Processing by Cyanidation Rules will be addressed at that time, in addition to some rule

changes being proposed by DEQ. The IDL and DEQ are working together to ensure the application process is as seamless as possible and there are no duplicative efforts.

The negotiated rulemaking has had good attendance, with a broad group of interests including representatives from the City of Boise, the Idaho Conservation League, the Idaho Mining Association, mining operators from around the state, EPA, DEQ, IDL, and the public.

A temporary rule will be presented for the Board's consideration at its June 23, 2005 meeting in Boise. A proposed rule is planned to be presented at the Board's November 16 & 17, 2005 meeting in Boise.

Dr. Joan Cloonan commented she had received several calls from individuals early on in the rulemaking expressing concern that DEQ may be trying to do too much in the temporary rule. She felt it was appropriate to have the rulemaking process split into two pieces; the temporary rule and the proposed rule. She suggested the parties participate in the negotiated rulemaking process and bring any further concerns to the Board meeting. She noted none of those parties was present. Mr. Lawson added that early in the process DEQ held meetings throughout the state to let people know how the process would work and provide an open forum for feedback. DEQ accumulated a mailing list and an email list to keep interested parties apprised of rulemaking activities for this matter. DEQ is receiving comments back on the mailings it has distributed, and they are addressing those comments.

Mr. Roger Furner, a private citizen who has been participating in the negotiated rulemaking, commented the process. He felt the two-step process of having both a temporary and proposed rulemaking seemed to be a waste of time and resources and believed it could have been addressed in one process. He congratulated DEQ and IDL staff on how they were handling the rulemaking and expressed confidence in their efforts. He believed they were trying their best to ensure the interests and concerns of all involved were adequately represented and addressed. Mr. Furner became interested in the issue by reading a series of articles in the *Idaho Statesman* written by Mr. Rocky Barker.

Mr. Lawson gave a PowerPoint presentation and discussion on cyanide and explained how it is used in the mining process (Attachment 1). Mr. Lawson spent over twenty years working in the mining industry at a number of different locations. He noted cyanide has a huge emotional attachment, but tends to be poorly understood. It inhibits the body's ability to uptake and hold oxygen. While it can be lethal in certain concentrations, he stressed that cyanide does not accumulate or bio-magnify. Its composition is very unstable and it breaks down fairly rapidly, so it does not linger in perpetuity.

Marti Calabretta was concerned the five million dollar bond might not be sufficient for reclamation costs and the potential costs to the state to meet water quality standards. She asked about Mr. Lawson's experience in reclamation projects and how he thought they could prevent a situation where the state would bear the cost of meeting critical water quality criteria. Mr. Lawson explained how IDL regulates reclamation of surface operations and sets the level of bonds through the Land Board. In the case of ore processing by cyanidation, there surface reclamation costs plus additional water quality issues. The legislation sets the five million dollar cap before it goes to the Land Board. DEQ and IDL will then coordinate to develop the total cost for cleaning up a facility when the operator submits his permit. Permits will be periodically reviewed to ensure the bond is adequate to cover the cost of closing the facility plus 10%.

Although DEQ may have preferred to keep the process within DEQ, Mr. Lawson believed they could work with IDL to have an effective bonding program. To go from the \$100,000 cap previously in place, to being able to ask for total cost to close a facility, is a much better situation for the State of Idaho.

Ms. Calabretta asked if part of the rule promulgation was to address preventative measures to try to prevent problems from developing. Mr. Lawson explained the current rulemaking was focused on addressing the requirements of Senate bill 1169, which just deals with bonding. During the next phase of the rulemaking for the proposed rule, DEQ hopes to be able to consider up front preventative measures. The idea is to be able to permit a facility in a manner that not only allows them to open and operate, but also to close with a cost they can afford. The cost of perpetual water treatment from the closure of mines can be very costly. The State of Nevada pays over a million dollars a year for perpetual water treatment caused by the closure of two mines.

AGENDA ITEM NO. 5: CONTESTED CASE AND RULE DOCKET STATUS REPORT

Paula Wilson briefly reviewed the status of pending contested cases and rulemaking efforts. She noted the number of contested cases is declining, while the rulemaking efforts are increasing.

Director Hardesty briefly discussed the air quality rulemaking that developed from a settlement between the dairy industry and the ICL. The first negotiated rulemaking meeting was recently held, and the stakeholders agreed the best way to approach the issue is through best management practices. The rulemaking will apply only to pollutants currently regulated by DEQ.

Chairman MacMillan asked if the Board would need training or a special briefing on any of the upcoming rules. Ms. Wilson responded the rules regarding plan and specification review being developed in response to Senate Bill 1220 will be complex. They are scheduled to come before the Board in November 2005. The Board may wish to schedule a briefing prior to that meeting. Director Hardesty agreed this would be a complex rulemaking that may need to be approached in two phases, similar to the ore processing by cyanidation rules. DEQ may be able to provide a clear picture by the August 2005 Board meeting.

Marti Calabretta requested a personal briefing from the appropriate DEQ staff on the temperature criteria in the Water Quality Standards. She also asked about the Board's role in regard to the TMDL schedule and list. Doug Conde, Deputy Attorney General, responded the Board's main role with respect to TMDLs would be to hear any contested cases that would be brought forward if a party appealed a TMDL once it was finalized and published. The Board would review the TMDL to determine if it was appropriately developed.

AGENDA ITEM NO. 6: LOCAL REPORTS AND ITEMS BOARD MEMBERS MAY WISH TO PRESENT

Chairman MacMillan briefly discussed the agenda items for the June 22 & 23 meeting in Boise. The Board concurred it would need only one day for the meeting and it would take place on June 23. The August 17 & 18 meeting is tentatively set for Wallace, Idaho with a possible field trip to learn about hard rock mining in the area. Director Toni Hardesty will contact the Idaho Mining Association to discuss the possibility.

Craig Harlen suggested Director Hardesty provide the Board with an update and report on the background of the Burlington Northern Refueling Depot matter at the August meeting.

The meeting adjourned at 12:20 p.m.

/s/

Dr. John R. MacMillan, Chairman

/s/

Craig Harlen, Secretary

/s/

Debra L. Cline, Management Assistant and Recorder

ACTION ITEMS

1. Update on the actions of the ECSC Servicing Communities: Planning for the Future Subcommittee and Land Use Planning Act issues. (Jon Sandoval)
2. Gather input from the stakeholders such as IACI, the ECSC, and the germane legislative committees regarding how the current contested case appeal process functions to see if there is interest or support in revising the EPHA to make contested cases record reviews and make recommendations on how to proceed. (Doug Conde)
3. Report on recently promulgated federal regulations for air quality standards on Tribal grounds and reservation grounds, and how the new regulations will coordinate with state regulations. What will the impact be to people living on the reservation? (Director Toni Hardesty)