



State of Idaho
DEPARTMENT OF ENVIRONMENTAL QUALITY
Board of Environmental Quality

1410 North Hilton, Boise, ID 83706-1255, (208) 373-0502

Dirk Kempthorne, Governor
C. Stephen Allred, Director

IDAHO BOARD OF ENVIRONMENTAL QUALITY

MINUTES

March 10, 2004

The Board of Environmental Quality convened on March 10, 2004 at 9:45 a.m. at:

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

ROLL CALL

BOARD MEMBERS PRESENT:

Paul C. Agidius, Chairman
Dr. J. Randy MacMillan, Vice-chairman
Dr. Joan Cloonan, Secretary
Donald J. Chisholm, Member
Craig D. Harlen, Member
Nick Purdy, Member

BOARD MEMBERS ABSENT:

Marguerite McLaughlin, Member

DEPARTMENT OF ENVIRONMENTAL QUALITY STAFF PRESENT:

Steve Allred, Director
Jon Sandoval, Chief of Staff
Debra Cline, Management Assistant to the Board
Don Essig, Water Quality Standards Manager
Doug Conde, Deputy Attorney General
Toni Hardesty, Administrator, Water Quality Division
Harriet Hensley, Deputy Attorney General
Paula Wilson, Administrative Rules and Hearing Coordinator

OTHERS PRESENT:

Judith M. Brawer, Advocates for the West
Justin Hayes, Idaho Conservation League
Teresa A. Hill, Stoel Rives
Jack Lyman, Idaho Mining Association
Krista McIntyre, Stoel Rives LLP
Suzanne Schaefer, SBS Associates/Monsanto
Spencer Wood, Boise State University

PUBLIC COMMENT PERIOD:

No comments were received.

AGENDA ITEM NO. 1: ADOPTION OF BOARD MINUTES

a. August 21, 2003

Dr. Joan Cloonan suggested a change to Page 5, Paragraph 4, to clarify and correct the term "VODs" to volatile organic chemicals (VOCs).

➤ **MOTION:** Dr. Cloonan moved the Board adopt the August 21, 2003 minutes as circulated with the suggested change.

SECOND: Dr. Randy MacMillan

VOICE VOTE: Motion carried unanimously.

AGENDA ITEM NO. 2: DIRECTOR'S REPORT

Director Steve Allred updated the Board on the status of relevant legislation. He also provided updates on budget cuts, employee turnover and morale, a more integrated working relationship with the Health Districts, the selenium cleanup in Southeast Idaho, INEEL cleanup issues, the Coeur d'Alene Commission, environmental issues at the Tamarack Resort development, and Treasure Valley air quality issues. Director Allred added that industry has been a great help in addressing these concerns during the last year.

AGENDA ITEM NO. 3: CONTESTED CASE HEARING

HECLA MINING COMPANY V. DEQ, CONTESTED CASE DOCKET NO. 0105-03-15

ORAL ARGUMENT AND DELIBERATION ON PETITIONS FOR REVIEW OF ORDER ON PETITION TO INTERVENE

Appearances

- **Judy Brawer, Advocates for the West, appeared on behalf of the Proposed Intervenor, Idaho Conservation League.**
- **Doug Conde, Deputy Attorney General, appeared on behalf of the Respondent, Department of Environmental Quality.**
- **Teresa Hill, Stoel Rives LLP, appeared on behalf of Petitioner, Hecla Mining Company**

NOTE: A FULL TRANSCRIPT OF THE HEARING IS AVAILABLE THROUGH THE DEQ HEARING COORDINATOR'S OFFICE, CONTACT (208) 373-0418.

Chairman Paul Agidius stated the Board was prepared to hear oral argument in this matter. Each party was allowed 30 minutes to present oral argument and rebuttal.

Judy Brawer argued in support of the Idaho Conservation League's (ICL) request for intervenor status in the contested case brought by the Hecla Mining Company challenging DEQ's Clean Water Act Section 401 Certification for the discharge permit for the Lucky Friday

Mine. She requested the Board to grant intervenor status to ICL and move forward to the actual merits of the contested case.

Doug Conde argued in support of ICL's request for intervenor status. He requested the Board reverse the hearing officer's decision and allow ICL to intervene in the case.

Teresa Hill argued in support of the hearing officer's decision denying intervenor status to ICL. She asked the Board to uphold the hearing officer's determination denying intervention in the contested case.

The parties presented rebuttal in support of their positions. Chairman Agidius then opened the floor to questions from the Board.

Don Chisholm discussed an earlier comment regarding stock ownership establishing standing because of financial interest. Mr. Chisholm believed the Board should not consider stock ownership as granting standing because it is an issue of corporate governance. He suggested the Board not consider stock ownership in its analysis of a case.

- **MOTION:** Dr. Randy MacMillan moved the Board go into executive session to consult with its legal representative on pending litigation as authorized by Idaho Code § 67-2345(f).
SECOND: Nick Purdy
ROLL CALL VOTE: Motion carried. 6 ayes; Chisholm, Cloonan, Harlen, MacMillan, Purdy, Agidius; 0 nays; 1 absent, McLaughlin.

Chairmen Agidius asked that the meeting room be cleared for the executive session. He noted that no action would be taken by the Board during the closed session, and the open meeting would be reconvened at 1:00 p.m. following lunch. He said there might be additional questions for the parties when the Board returns to deliberate the matter. The meeting room was cleared at 11:30 a.m. for the executive session. The open meeting reconvened at 1 p.m., and Chairman Agidius opened the floor to questions and deliberation.

- **MOTION:** Don Chisholm moved the Board reverse the decision of the hearing officer and allow the ICL, as the representative of Mr. Justin Hayes, to intervene in this case, and instruct the hearing officer to use appropriate discretion to see that the proceedings are not unduly delayed and the issues are not expanded beyond the issues that are presented by the petition for review and the response of DEQ.
SECOND: Nick Purdy
DISCUSSION: Chairman Agidius wanted to make sure it was clear in the decision that it is based on the affidavit of Justin Hayes and not that of Mr. Osborn, to provide direction as to what is required to meet the substantial interest standard.
ROLL CALL VOTE: Motion carried. 6 ayes; Chisholm, Cloonan, Harlen, MacMillan, Purdy, Agidius; 0 nays; 1 absent, McLaughlin.

Chairman Agidius thanked the parties for their presentations and complimented all three for having persuasive arguments presented in a very professional manner. The hearing concluded at 1:30 p.m.

AGENDA ITEM NO. 4: WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS, DOCKET NO. 58-0102-0303 (PENDING RULE)

Don Essig, Water Quality Standards Program Manager, presented this rule to set a site specific standard for water temperature to support Chinook spawning in the reach of the Snake River from Hells Canyon Dam to the confluence with the Salmon River. This rule was adopted by the Board as a temporary rule at its November 2003 meeting. A public comment period was provided, but no comments were received.

- **MOTION:** Dr. Randy MacMillan moved the Board adopt the Water Quality Standards and Wastewater Treatment Requirements as presented in the final proposal under Docket No. 58-0102-0401.

SECOND: Dr. Joan Cloonan

VOICE VOTE: Motion carried. 6 ayes; 0 nays; 1 absent.

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

Paula Wilson, administrative rules and hearing coordinator, updated the Board on the status of several ongoing contested cases. One of the cases has presented a situation that will require direction from the Board regarding a procedural question. The parties in the C. Wright Construction appeal have entered into a settlement agreement. Initially, no hearing officer was assigned to this case because the parties had agreed to work toward a settlement. At some point, an order will be needed to dismiss the case. Since there is no hearing officer, someone must be appointed to sign the order. Ms. Wilson discussed the matter with Harriet Hensley, Board counsel, and they suggested the Board appoint the Chairman, on an ongoing basis, to sign the preliminary order dismissing the case in such situations. In some cases, the party simply withdraws the appeal, and no order is needed. In the cases where an order is needed, there would always be complete agreement by both parties and a signed stipulated agreement.

Chairman Agidius stated he would have no problem with a single Board member being appointed to act as presiding officer to sign dismissal orders under those circumstances. Members discussed having a single hearing officer appointed to handle such cases and discussed the cost.

- **MOTION:** Craig Harlen moved to Board appoint the Chairman, or in his absence the Vice-chairman, to act as the hearing officer for the Board in contested cases where both parties have signed a stipulated agreement and no hearing officer has been assigned.

SECOND: Dr. Joan Cloonan

VOICE VOTE: Motion carried. 6 ayes, 0 nays, 1 absent.

Ms. Wilson reviewed the docket status report. She asked for guidance from the Board regarding the status of the hydrogen sulfide rulemaking. The Board, by consensus, advised that the rule was postponed pending submission of further information to the Board by DEQ and the Division of Health. Budget constraints have delayed the research and preparation of that information. The DEQ website will be updated regarding the status of the rulemaking.

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

- a. Board Schedule and Possible Field Trips

The Board rescheduled its April 14 & 15 meeting to a one-day meeting on May 20, 2004 in Boise, Idaho. A final legislative report will be presented by Director Allred at the May meeting.

The Board selected Cascade, Idaho as the site for its June 23 & 24 field trip and meeting. Members suggested the Tamarack Resort environmental issues, Cascade Reservoir water quality issues, DEQ's work with the local irrigation and sewer districts, and the Hells Canyon Complex as possible field trip and presentation subjects.

The meeting adjourned at 2:45 p.m.

/S/

Paul C. Agidius, Chairman

/S/

Dr. Joan Cloonan, Secretary

/S/

Debra L. Cline, Management Assistant and Recorder