



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

May 20, 2004

The Board of Environmental Quality convened on May 20, 2004 at 9:30 a.m. at:

**DoubleTree Hotel – Riverside
Liberty Room
2900 Chinden Blvd.
Boise, Idaho 83714**

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
Mary Anderson, Modeling Coordinator, Air Quality Division
Martin Bauer, Administrator, Air Quality Division
John Brueck, Hazardous Waste Regulation Program Manager
Jess Byrne, Intergovernmental Affairs
Debra Cline, Management Assistant to the Board
Doug Conde, Senior Deputy Attorney General
Yayi Dong, Ph.D, Air Quality Meteorologist
Darrell Early, Deputy Attorney General
Orville Green, Administrator, Waste and Remediation Division
Joe King, Acting Administrator, Boise Region Office
Michael McGown, Regional Airshed Manager, Boise Region
Diane Riley, Smoke Management Air Quality Analyst
Paula Wilson, Administrative Rules and Hearing Coordinator

OTHERS PRESENT:

Beth Baird, City of Boise
Gale Batt, Idaho Water Users Association
Carl Ellsworth, City of Boise
Teresa Hill, Stoel Rives
Jack Lyman, Idaho Mining Association
Lauren McLean, Idaho Conservation League
Julie Morrison, Idaho Cattle Association
Dick Rush, Idaho Association of Commerce and Industry
Suzanne Schaefer, SBS Associates/Monsanto
Rob Sterling, Micron

PUBLIC COMMENT PERIOD:

No comments were received.

AGENDA ITEM NO. 1: ADOPTION OF BOARD MINUTES

a. October 22 & 23, 2003

➤ **MOTION:** Dr. Joan Cloonan moved the Board adopt the October 22 & 23, 2003 minutes as circulated with a minor typographical correction.

SECOND: Dr. Randy MacMillan

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

b. November 13, 2003

c. February 4, 2004

d. March 10, 2004

➤ **MOTION:** Dr. Cloonan moved the Board adopt the November 13, 2003; February 4, 2004; and March 10, 2004 minutes as circulated with a typographical correction on Page 7 of the November minutes.

SECOND: Dr. Randy MacMillan

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

AGENDA ITEM NO. 2: DIRECTOR'S REPORT

a. Legislative Wrap-up

Director Steve Allred reported the DEQ rules before the Idaho Legislature this session were not controversial and most were adopted without comment. A proposed budget cut to the Air Quality Program was successfully diverted. It would have had a substantial affect on DEQ's ability to operate the program. The budget cut was instead taken out of administrative costs.

Director Allred discussed a bill that was proposed regarding TMDL development. It would have restricted DEQ's ability to complete the TMDLs as required by the court settlement. The bill was vetoed by the Governor. Director Allred felt the bill was not good legislation and

was not necessary. He stated the current TMDL process with the Basin Advisory Groups and Watershed Advisory Groups was working extremely well as is.

He noted the Joint Finance - Appropriations Committee would be conducting a tour in early June. DEQ staff will be present to discuss TMDL issues. He invited Board members to join the tour and take the opportunity to interface with JFAC members.

Director Allred informed the Board that the Speaker of the House and the Pro Tem have assigned the Environmental Common Sense Committee the task of investigating whether Idaho should administer the National Pollutant Discharge Elimination System (NPDES). The Committee is to bring its findings and recommendations to the legislature next session. Director Allred strongly supported having Idaho administer the NPDES program.

b. Emerging Issues in Air Quality

Director Allred discussed several issues concerning air quality. Treasure Valley air quality continues to be a concern. He feared it would not be possible to avoid a non-attainment designation by EPA unless there is more political support for proactive management.

Idaho is in the process of adopting a "regional haze" plan. There are a number of national parks surrounding Idaho that are involved in an effort to control visibility and haze problems. EPA has issued new guidance on what states can do to with permitting to affect the regional haze issue. DEQ should watch the matter closely because it has potential to affect permitting and regulations in Idaho.

Director Allred briefly discussed air quality issues associated with agriculture. Problems with one feedlot have raised public concern about feedlots. He is working proactively with the industry to ensure problems do not escalate.

Smoke management efforts with last year's crop residue burning were very successful. Efforts will continue to improve the process and increase monitoring. The cooperation and management of the matter last year were very good. One issue that must be resolved is burning on lands in the federal Conservation Reserve Program (CRP). The program allows the lands to be burned off every ten years. There are thousands of acres that are coming up on the tenth year. Lands in the CRP program are not covered in the Department of Agriculture Crop Residue Program and are therefore not regulated. Since it is not a recognized as a legal form of burning, DEQ has issued a number of field citations. Director Allred believed it should be classified as crop residue burning and has urged the Department of Agriculture put it into their program so it can be properly managed.

AGENDA ITEM NO. 3: RULES AND STANDARDS FOR HAZARDOUS WASTE, DOCKET NO. 58-0105-0401 (TEMPORARY RULE)

Orville Green, Administrator, Waste Management and Remediation Division, presented this docket to revise the Idaho rules and standards regarding how Hazardous Waste Management Permit contested cases and appeals are handled. The revision will streamline DEQ procedures by making the rules and procedures for all permit appeals consistent within DEQ. The rulemaking was suggested by the Board at its February 2004 meeting to allow consistency between the Rules of Procedure before the Board of Environmental Quality and the Rules and

Standards for Hazardous Waste. This rule is neither more nor less stringent than the federal rules. It is simply a procedural change in process.

- **MOTION:** Dr. Joan Cloonan moved the Board adopt, as temporary rules, the Rules and Standards for Hazardous Waste as presented under Docket No. 58-0105-0401 with an effective date of May 21, 2004.

SECOND: Craig Harlen

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

AGENDA ITEM NO. 4: RULES OF ADMINISTRATIVE PROCEDURE BEFORE THE BOARD OF ENVIRONMENTAL QUALITY, DOCKET NO. 58-0123-0401 (TEMPORARY RULE)

Darrell Early, Deputy Attorney General, presented this companion rule to the previous hazardous waste rule change. The existing Rules of Administrative Procedure before the Board exclude hazardous waste permit appeals. This rulemaking will include hazardous waste permit appeals so the Board's rules will be consistent with the Idaho Administrative Procedures Act.

Mr. Early discussed how this rule change would affect the pending Safety Kleen appeal. The pending appeal before the Board has been dismissed in its entirety and Safety Kleen has appealed the Board decision to the district court. In their appeal to the court, Safety Kleen did not seek to stay the effect of any temporary rules; they did however request the court not consider the effect of any rule changes that might be made by the Board. The matter will be decided by the court. Typically, procedural rule changes are viewed as having retroactive application to any pending cases before an agency or court.

- **MOTION:** Dr. Joan Cloonan moved the Board adopt, as temporary rules, the Rules of Administrative Procedure before the Board of Environmental Quality, as presented under Docket No. 58-0123-0401 with an effective date of May 21, 2004.

SECOND: Don Chisholm

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

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 ongoing contested cases and rulemaking activities. She mentioned that the DEQ website has a list of precedential agency orders. The last six orders issued by the Board are now available in electronic version on the website. All previous orders are available in hard copy from Ms. Wilson.

Director Allred commented that he expects the incorporation of the new federal standards on arsenic into Idaho's drinking water rules to be very controversial. Idaho must adopt the new federal standards or it will lose primacy of the drinking water program. The new standards will have a very large financial impact on drinking water systems in the state.

Martin Bauer, Administrator of the Idaho Air Quality Division, reported on the status of the rulemaking for the Title V Program. The rulemaking was opened to address and discuss Title V Program fees. DEQ intends to let the shortfall clause sunset in 2005 because at this time, it appears funding will be adequate. The rulemaking will be left open and if it appears that funding

will not be adequate, the rule will be re-noticed and fees will be renegotiated. He also explained how the “presumptive minimum” requirement works.

Director Allred discussed the Title V fees paid by the Department of Energy. DOE considers the money a grant instead of a fee, and this puts certain restrictions on how the funds can be used. This continues to be a problem for DEQ, and future availability of the funds is somewhat uncertain.

Director Allred introduced Joe King, acting administrator for the DEQ Boise Region Office. He expressed his appreciation for Mr. King’s efforts and the fine quality of work he does for DEQ. Director Allred announced that Mike McGown has been chosen as the new regional administrator for the Boise Region office, effective June 1, 2004. Mike is well known and well respected within the agency. The Director is very confident Mike will do a good job.

AGENDA ITEM NO. 6. TREASURE VALLEY AIRSHED UPDATE

Mike McGown updated the Board on air quality activities that have taken place since the Governor’s air quality conference in September 2003 (Attachment 1). He also reviewed the Summertime Air Pollution Response Plan (Attachment 2) which can be viewed on the DEQ website at http://www.deq.state.id.us/air/dailyreports/pollution_response_plan_summer.pdf and the Wintertime Air Pollution Response Plan (Attachment 3) at http://www.deq.state.id.us/air/dailyreports/pollution_response_plan.pdf

a. Inversion and Air Quality Modeling for the Treasure Valley

Dr. Yayi Dong, Atmospheric Scientist and DEQ Air Quality Meteorologist, gave a PowerPoint presentation and discussion on how inversion and air quality modeling is conducted by DEQ (Attachment 4).

He explained that an efficient air quality forecast model has been developed at Idaho DEQ to provide on-time PM_{2.5} air quality advisory information for airshed managers at DEQ. This new model uses a simple mechanical and electrical circuit analog based on surface winds and the depth of the stable atmospheric layer above the surface.

The model provides fast, reliable air quality forecasts up to 3 days in the future. It uses MM5 mesoscale meteorological modeling predictions of wind and stability in the lower 1500m. The model requires minimal input data and computer power and it runs thousands of times faster than traditional air quality models. Although still experimental, this model may improve inversion and air quality forecasts in the future. Dr. Dong discussed the air quality problems in the Treasure Valley, the challenges of air quality forecasting, the model design, and the model performance during the 2003-2004 winter in the Treasure Valley.

AGENDA ITEM NO. 7: AIR QUALITY UPDATE

a. Rulemaking Progress Report

Martin Bauer reported on rulemaking activities within the Air Quality Division. He discussed how the negotiated rulemaking was being structured to promote open, honest

discussions with the stakeholders. The New Source Review and Permitting Clarification rulemaking efforts are both making good progress.

Dr. Joan Cloonan commended Mr. Bauer on the joint New Source Review training he conducted with Gary McCutchen, industry, and DEQ and the permit writers. She felt the training session was very productive and insightful.

b. Smoke Management Program

Diane Riley, DEQ Smoke Management Air Quality Analyst, discussed past, present, and future smoke management programs. The Smoke Management Program takes a proactive approach to managing all forms of burning to protect air quality while preserving fire as a tool for uses such as agricultural burning and prescribed burning. She also discussed outreach efforts to other agencies to develop collaborative efforts and increase efficiency.

Dr. Randy MacMillan stated he was very impressed with the caliber of work being done by the DEQ staff. He complimented the Air Quality staff on the progress the programs have made over the last few years.

AGENDA ITEM NO. 8: ITEMS BOARD MEMBERS MAY WISH TO PRESENT

Dr. Randy MacMillan reported on the discussions taking place regarding water shortages in the Eastern Snake Plain Aquifer. Many people believe the aquifer has been over appropriated. The Idaho Legislature created the Expanded Natural Resources Interim Committee to look at water supply and management issues and help negotiate a solution. The Committee will try to address short-term, medium-term, and long-term management of the aquifer. The issue is emotionally charged and has been very controversial. The problem will have significant impacts on the economy, environment, and growth of the entire Eastern Snake Plain Aquifer if it is not resolved. Similar water shortage and aquifer problems are taking place in the Bear River, Mountain Home, Treasure Valley, and Panhandle areas. The Committee is looking at these issues all over the state, but are focusing on the Eastern Snake Plain Aquifer.

Craig Harlen notified the Board he had consulted with Harriet Hensley, Deputy Attorney General and legal counsel for the Board, to learn what guidelines the Board is using to determine standing and intervention in contested cases, and the difference between the two. Ms. Hensley will prepare written guidance and it will be provided to the Board members.

a. Upcoming Field Trips

Debra Cline, Management Assistant to the Board, provided a brief update on the Board meeting and field trip on June 23 and 24 in Cascade, Idaho. A number of environmental projects and issues have been proposed by regional staff for the field trip. A final agenda will be available by June 7, 2004. The overview of environmental issues in the region will be presented at the June 24 meeting.

Don Chisholm suggested the Board consider a tour of the Micron facility in Boise as a future field trip site. Rob Sterling of Micron has indicated they would be happy to conduct a tour of the facility for the Board. The tour will be scheduled for the first available date.

Debra Cline presented a proposal to streamline how the meeting materials and docket binder are presented to the Board. She suggested the meeting binder materials that are distributed at the meeting be included in the docket binders that are mailed to the Board two weeks prior to a meeting. Board members felt it would be more convenient to have just one binder to work with, and approved the proposal. Several members commented it would be helpful to have the information available as far in advance of the meeting as possible, particularly when there is a very large agenda or a contested case.

The meeting adjourned at 2:30 p.m.

Paul C. Agidius, Chairman

Dr. Joan Cloonan, Secretary

Debra L. Cline, Management Assistant and Recorder