



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

November 13, 2003

The Board of Environmental Quality convened on November 13, 2003 at 8:30 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  
Marguerite McLaughlin, Member

##### BOARD MEMBERS ABSENT:

Nick Purdy, Member

##### DEPARTMENT OF ENVIRONMENTAL QUALITY STAFF PRESENT:

Steve Allred, Director  
Jon Sandoval, Chief of Staff  
Tom Aucutt, Drinking Water Planning & Policy Coordinator  
John Brueck, Hazardous Waste Regulation Program Manager  
Jess Byrne, Intergovernmental Affairs  
Debra Cline, Management Assistant to the Board  
Doug Conde, Deputy Attorney General  
Don Essig, Water Quality Standards Manager  
Orville Green, Administrator, Waste and Remediation Division  
Toni Hardesty, Incoming Administrator, Water Quality Division  
Chris Lavelle, Drinking Water Capacity Development Coordinator  
David Mabe, Administrator, Water Quality Division  
Brian Monson, Hazardous Waste Program Manager  
Ron Sutcliff, Deputy Attorney General

**OTHERS PRESENT:**

Representative Dell Raybould

**PUBLIC COMMENT PERIOD:**

No comments received.

**AGENDA ITEM NO. 1:           ADOPTION OF BOARD MINUTES**

a.       May 28, 2003

- **MOTION:** Dr. Joan Cloonan moved the Board adopt the May 28, 2003 minutes as presented.  
**SECOND:** Dr. Randy MacMillan  
**VOICE VOTE:** Motion carried unanimously.

**AGENDA ITEM NO. 2:           DIRECTOR'S REPORT**

Director Steve Allred discussed the ongoing negotiations regarding the removal of transuranic waste from INEEL. DEQ recently made a proposal to the Department of Energy on the removal and is awaiting a response. Director Allred believes there is a practical approach and would like to move forward quickly to ensure there is no spread of contamination.

Director Allred reported the contested case regarding the wastewater land application for Glanbia Foods may have big implications if it goes to court. A court decision may bring higher requirements on controlling pathogens.

The Director discussed the impact of the revised standard for arsenic that was adopted by the federal government last year. The standard is a "one size fits all" approach that is causing serious economic problems for small drinking water systems. DEQ prefers to use an overall risk management approach. If the small systems are forced out of business by the stricter standards, the public will be forced to use private wells that have no oversight or level of protection. Funding to help these systems is drying up as the need for assistance is increasing.

DEQ is beginning negotiations for the Air Quality Program's Title V fees. INEEL has indicated they will not pay the negotiated fee as they have done in the past. They intend to pay based on emissions the same as others in the program. This will mean a loss of up to \$400,000 to the Title V program.

DEQ and Board representatives will meet with the Senate Health & Welfare Committee on December 3, 2003 to discuss the role of the Board regarding rules and regulations.

Dr. Randy MacMillan asked if there was concern about antibiotic resistance in the Glanbia case. It is becoming a global issue. Doug Conde responded it was not specifically discussed. There was discussion about using the fodder grown with the wastewater to feed cattle and how it might affect their immune systems.

**AGENDA ITEM NO. 3:**

**RULES REGULATING THE DISPOSAL OF RADIOACTIVE MATERIALS NOT REGULATED UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED, DOCKET NO. 58-0110-0301 (PENDING RULE)**

Director Allred noted this rule was previously adopted by the Board as a temporary rule. It provides notification requirements for moving radioactive waste. The rule is needed to close a loophole in the regulations to prevent the indiscriminate disposal of radioactive waste. Comments were accepted and a public hearing was held on the rule. The rule was not changed as a result of the comments.

Dr. Randy MacMillan asked about a comment regarding waste from an elemental phosphorus plant being used for slag for roadbeds and concrete. Director Allred explained there was waste product being used for such purposes. It has a slight radioactive content, but it is not enough to be regulated. The issue is not within the purview of this rulemaking, and the practice has been discontinued. The Idaho Mining Association has committed to take part in a negotiated rulemaking to develop standards for the management of such waste. The rulemaking has not been initiated due to a lack of funding and resources, but discussions have taken place on how to move forward. It is not a priority at this time, and DEQ believes it is not a significant public health issue.

Craig Harlen explained at one point elemental producers were selling crushed aggregate to concrete plants, and it was being used for foundations for homes. It was purported to be causing a higher incidence of radon in the basements of those homes. The current practice is to cap the piles of slag with molten slag to prevent dust and runoff.

- **MOTION:** Dr. Randy MacMillan moved the Board adopt the Rules Regulating the Disposal of Radioactive Materials not Regulated under the Atomic Energy Act of 1954, as Amended, as presented in the final proposal under Docket No.58-0110-0301.
- SECOND:** Dr. Joan Cloonan.
- VOICE VOTE:** Motion carried. 6 ayes; 0 nays; 1 absent.

**AGENDA ITEM NO. 4:**

**RULES AND STANDARDS FOR HAZARDOUS WASTE, DOCKET NO. 58-0105-0301 (PENDING RULE)**

John Brueck, Hazardous Waste Regulation and Policy Coordinator, presented the annual update to the rules to adopt by reference updates to the federal hazardous waste rules promulgated in the last year. This is a routine annual procedure DEQ performs to satisfy consistency and stringency requirements of the Idaho Hazardous Waste Management Act of 1983. The process allows DEQ to maintain primacy and authorization from the EPA to administer the Hazardous Waste Program.

Mr. Brueck explained each of the changes and responded to questions. Public notice was provided and no comments were received.

- **MOTION:** Dr. Joan Cloonan moved the Board adopt the Rules and Standards for Hazardous Wastes as presented in the final proposal under Docket No.58-0105-0301.
- SECOND:** Craig Harlen
- VOICE VOTE:** Motion carried. 6 ayes; 0 nays; 1 absent.

**AGENDA ITEM NO. 5**

**IDAHO RULES FOR PUBLIC DRINKING WATER SYSTEMS, DOCKET NO. 58-0108-0302 (PENDING RULE)**

Tom Aucutt, Drinking Water Planning and Policy Coordinator, explained the rules are updated periodically in order to maintain conformance with EPA's regulations. This rulemaking will incorporate by reference revisions to the public notification rule and the consumer confidence report rule. These "public right to know" rules are currently included in Idaho's rules. The revisions are minor corrections.

- **MOTION:** Dr. Randy MacMillan moved the Board adopt the Idaho Rules for Public Drinking Water Systems as presented in the final proposal under Docket No. 58-0108-0302, with an effective date of October 24, 2003.

**SECOND:** Dr. Joan Cloonan

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

**AGENDA ITEM NO. 6**

**IDAHO RULES FOR PUBLIC DRINKING WATER SYSTEMS, DOCKET NO. 58-0108-0301 (PENDING RULE)**

Chris Lavelle, Drinking Water Capacity Development Coordinator, presented an amendment to the Idaho Rules for Public Drinking Water Systems. The amendment involves the Drinking Water Operator Certification Rules, and would establish fee standards, make the rules consistent with recently adopted wastewater operator certification rules, and make some housekeeping changes. Negotiated rulemaking was conducted with stakeholders, and a public hearing was held. No comments were received during the public comment period.

Application and testing fees are currently being collected under a voluntary program. They have not been increased for many years and are not sufficient to support the program. DEQ has subsidized the Operator Certification Board for several years. DEQ is looking at the possibility of changing the renewal cycle from a one-year to a two-year cycle.

In June of 2003 the Board adopted this rule as a temporary rule. If adopted, this pending rule will replace the temporary rule.

Marguerite McLaughlin suggested a change for clarification purposes to Page 151, Grandparenting Certificate, Section 555.01, to change the language regarding the effective date.

- **MOTION:** Marguerite McLaughlin moved the Board adopt the Idaho Rules for Public Drinking Water Systems, as presented in the final proposal under Docket No. 58-0108-0301, with the proposed amendment to strike the words "effective date April 15, 2002" from Section 555.01.

**SECOND:** Don Chisholm

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

**AGENDA ITEM NO. 7**

**WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS, DOCKET NO. 58-0102-0301 (PENDING RULE)**

Don Essig, Water Quality Standards Manager, explained this rulemaking is needed to adopt a site-specific criteria for dissolved oxygen in a portion of the Snake River along the

Idaho/Oregon border. It sets a standard to support the target of the Snake River/Hells Canyon TMDL.

The rule was adopted by the Board as a temporary rule in June 2003. A public comment period was held and comments were received from the Boise Project Board of Control, Idaho Water Users Association (IWUA), and Idaho Power Company. In response to comments, the rule was revised at Section 285 to eliminate the dissolved oxygen criteria for salmonid spawning below Hells Canyon Dam because further examination proved the criteria was not necessary.

Chairman Paul Agidius asked if DEQ had the funding needed to revisit the attainability of the current cold water aquatic life designation for the Snake River above Brownlee Dam to consider changing it to a seasonal cold water aquatic life designation. Mr. Essig responded that while DEQ does not specifically have a budget for the issue, they are looking into the matter. A meeting is scheduled with CH2M Hill, who developed the use refinement on behalf of the Boise Project Board of Control and IWUA, to discuss further steps that might be needed. They will also discuss how valuable that use change would be in light of the fact that the TMDL is going forward based on natural background conditions. Those background conditions will not change with a different designation.

- **MOTION:** Craig Harlen moved the Board adopt the Water Quality Standards, as presented in the final Docket No. 58-0102-0301. He further moved the Board adopt the revisions included in the final proposal as amendments to the previously adopted temporary rules with the amendments becoming effective November 14, 2003.

**SECOND:** Dr. Joan Cloonan

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

**AGENDA ITEM NO. 8**                      **WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS, DOCKET NO. 58-0102-0304 (TEMPORARY RULE)**

Don Essig reported this rule will adopt a site specific criteria water temperature in the Snake River from Hells Canyon Dam down to the confluence of the Salmon River. Fall Chinook Salmon spawning takes place in this portion of the river. This rule updates the Idaho Water Quality Standards to be consistent with the Snake River Hells Canyon TMDL temperature and regional temperature guidance. It revises the salmonid spawning and incubation temperature criteria to 13° C as a weekly maximum temperature. This criteria was recommended by EPA in a recently developed guidance. The current criteria is 13° C as a daily maximum and 9° C as a daily average. The new criteria adds more of a safety factor to the TMDL and is less stringent than the old criteria.

Chairman Agidius asked if it was reasonable to expect to attain the new standard. Mr. Essig said it remains to be seen, but they believe it is possible. It was determined that the 9° standard was unattainable.

Dr. Randy MacMillan asked if Idaho Power had been consulted to see if they thought it would be feasible to take the actions necessary to meet the TMDL. Mr. Essig stated the process has not yet looked at what it will take to implement the TMDL. Director Allred noted that this is an issue in the FERC relicensing. DEQ attempted to pick a standard that was agreeable to EPA, was less stringent than the current standard, but will require at least some operational

modifications by Idaho Power. Idaho Power has been involved in the process all along, and is in the process of conducting feasibility studies as to what measures will be needed to meet a number of objectives including temperature.

Marguerite McLaughlin asked if the new criteria would have any affect on water or water users below this stretch of the river. Chairman Agidius confirmed that it would not regulate or affect any waters below the confluence of the Snake and Salmon Rivers. Don Essig said it may even make it easier for waters downstream to meet their temperature criteria.

Representative Dell Raybould asked if there was a comparison between the new criteria and the inflows of the Snake River above Brownlee. He wondered if we were asking Idaho Power to do something for the temperature of the river that natural conditions of the river would not provide if it were a free-flowing river. Don Essig explained the TMDL requires Idaho Power to meet 13° C or the in-flowing temperature if it is greater than 13° C. It basically requires Idaho Power to have no effect on the temperature of the water coming into their system. He explained how the 13° C temperature criteria was developed and the science it is based on.

➤ **MOTION:** Dr. Randy MacMillan moved the Board adopt, as temporary rules, the Water Quality Standards, as presented under Docket No. 58-0102-0304, with an effective date of November 14, 2003.

**SECOND:** Dr. Joan Cloonan

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

**AGENDA ITEM NO. 9**                      **BOARD SCHEDULE FOR 2004**

The Board concurred on the following meetings for 2004:

February 4 & 5	Boise
April 14 & 15	Location to be determined
June 23 & 24	Location to be determined
August 4 & 5	Location to be determined
October 20 & 21	Boise
November 17 & 18	Boise

**AGENDA ITEM NO. 10**                      **CONTESTED CASE AND RULE DOCKET STATUS REPORT**

Paula Gradwohl reviewed the docket status report. All items on the list have now been adopted. A contested case will come before the Board at the February 2004 meeting regarding Safety Kleen.

**AGENDA ITEM NO. 11:**                      **ITEMS BOARD MEMBERS MAY WISH TO PRESENT**

Board members discussed whether the Board should have the option of deliberating in executive session when it is acting in a judicial capacity on a contested case. It would require legislation to change the law. While members agreed it would allow a freer, more open discussion, they were concerned with how the media and the public would perceive it. There were also concerns with how such a change in the law would affect other entities.

Members felt it was sometimes uncomfortable to deliberate sensitive legal issues in public. They thought it was also difficult to always know exactly what you can or cannot say or ask in an executive session. Clarification would be helpful regarding the writing, drafting, and circulation of the final decision to avoid a perception of closed deliberation. Director Allred will ask legal counsel to provide guidance on the matter. The Board will take the matter up after it hears a report from its legal counsel.

Members discussed locations and issues for future field trips. The Hells Canyon Dam Complex was mentioned as a possible tour so the Board could learn how the dams operate and deal with environmental demands. Director Allred will investigate options.

Members thought it was important to look at the river first hand and see the impacts of the dams and the impact of the TMDLs and other regulations on the ground. Chairman Agidius felt the trip should include a full tour of the dam, if possible, to understand what changes were feasible.

The meeting adjourned at 2:30 p.m.

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Paul C. Agidius, Chairman

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Dr. Joan Cloonan, Secretary

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Debra L. Cline, Management Assistant and Recorder