



State of Idaho
DEPARTMENT OF ENVIRONMENTAL QUALITY
BOARD OF ENVIRONMENTAL QUALITY

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John H. Tippets, Director

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IDAHO BOARD OF ENVIRONMENTAL QUALITY

MINUTES

November 16, 2017

The Idaho Board of Environmental Quality convened on November 16, 2017, at
9:00 a.m. at:

**Idaho Department of Environmental Quality
Conference Room A & B
1410 N. Hilton
Boise, Idaho**

BOARD MEMBERS PRESENT

Kevin Boling, Chair
Beth Elroy, Vice-Chair
Kermit Kiebert, Secretary
Dr. John R. "Randy" MacMillan, Member
Nick Purdy, Member
Carol Mascareñas, Member

BOARD MEMBERS ABSENT

John McCreedy, Member

DEPARTMENT OF ENVIRONMENTAL QUALITY STAFF PRESENT

John H. Tippets, Director
Lisa Carlson, Deputy Attorney General
Paula Wilson, Administrative Rules Coordinator
Rosie Alonzo, Management Assistant, Assistant to the Board
Jess Byrne, Deputy Director
Barry Burnell, Water Quality Division Administrator
Tiffany Floyd, Air Quality Division Administrator
Michael McCurdy, Waste Management and Remediation Division Administrator
Jason Pappani, Water Quality Standards Lead
Stephanie Jenkins, Water Quality Standards Scientist
Tim Wendland, Loan Program Manager
Mary Anne Nelson, IPDES Program Manager
Jill White, Communications and Planning Specialist
Matt Alvarado, Hazardous Waste Regulation & Policy Coordinator
Dr. Carl Brown, Air Quality Rules Coordinator
Rick Gresil, DEQ Deputy Attorney General
Don Essig, Surface Water Program Manager
Dr. Norka Paden, Toxicologist/Risk Assessor
Lisa O'Hara, DEQ Deputy Attorney General
Mary Anderson, Mobile and Area Source Program Manager
Natalie Creed, Hazardous Waste Unit Manager

James Craft, Onsite Wastewater Coordinator
Esther Ramirez, Administrative Assistant
Jack Carpenter, Financial Officer

OTHERS PRESENT:

Kelly McTigue, OMM
Johanna Bell, Association of Idaho Cities
Ben Davenport, Idaho Mining Association
Sean Covington, Formation
Ben Latham, Arcadis
Branden Jensen, Idaho Farm Bureau
Johnna Sandow, NMFS
Alan Prouty, Simplot
Justin Hayes, Idaho Conservation League
Brenda Tominaga, Idaho Rural Water Association, Idaho Water Policy Group (IWPG)
Chip Pierce, PFM
Shawn Nydegger, State Treasurer's Office
Edelene Ohman, State Treasurer's Office
Michael Thomas, Wyoming Department of Environmental Quality (*via conference phone*)
Brett Converse, JUB Engineers (*via conference phone*)
Bart Wilking, Nu-West
Amber Christofferson, Division of Financial Management
Gabriela Martinez, Self

- ❖ All referenced attachments are permanent to the minutes on file at the Idaho Department of Environmental Quality.

CALL TO ORDER AND ROLL CALL

Chairman Kevin Boling called the meeting of the Idaho Board of Environmental Quality (Board) to order at 9:00 a.m. Roll call was taken with six members present. Mr. John McCreedy was not present. The chairman noted public members had joined the meeting via the conference phone.

PUBLIC COMMENT PERIOD

The chairman opened the floor to members of the public who wanted to address the Board on issues not on the agenda. There were no comments.

AGENDA ITEM NO. 1: DIRECTOR'S REPORT

Director John Tippetts reported on the following:

- **Idaho Pollutant Discharge Elimination System Program (IPDES)**—For DEQ to obtain primacy, legislation is required to allow the director to sign a memorandum of agreement with EPA that will outline authorities and exclude discharges from large vessels from DEQ's primacy. This legislation also includes setting up a dedicated fund for the collected IPDES fees.
- **Crop Residue Burning**—DEQ may have to initiate legislation if EPA does not approve the Crop Residue Burning Program by the end of February 2018. The legislation would extend the current provision until DEQ receives EPA approval.
- **DEQ Budget**—DEQ is requesting a total appropriation of \$65.75 M this year. Federal funds for the Silver Valley are reduced. In the general funds appropriation, DEQ is requesting an increase primarily for IPDES Program software development and four additional employees.

- **Decision Units**—DEQ’s decision units will include four additional IPDES program employees, spending authority for the Volkswagen settlement funds received, and transfer of \$100,000 between two accounts to offset lost federal funds and keep the necessary staff presence in the Silver Valley.
- **Legislative Briefings**—Director Tippetts and Deputy Director Byrne have been meeting with legislators. During those meetings they are informing them of the possibility of an arrangement with the Idaho Bond Bank to fund large wastewater projects. This information will be presented to the Board later today.
- **Strategic Planning**—All state agencies are required by statute to have a strategic plan. Although DEQ’s strategic plan has been held as a model plan, DEQ feels it can do better. DEQ is in the early stages of changing the plan to a results-oriented matrix.

Director Tippetts responded to questions from the Board.

AGENDA ITEM NO. 2: APPROVAL OF MEETING MINUTES

Before approving the board meeting minutes from May 10 and 11, 2017, Chairman Boling asked Ms. Lisa Carlson to report on the follow-up issues with Mr. Carl Massaro on the Triumph Mine. Ms. Carlson provided a brief update to the Board.

- **MOTION:** Mr. Nick Purdy moved that the Idaho Board of Environmental Quality approve the May minutes as prepared.
- **SECOND:** Ms. Beth Elroy
- **VOICE VOTE:** Motion carried unanimously.

AGENDA ITEM NO. 3: WATER QUALITY STANDARDS, DOCKET NO. 58-0102-1702
Rulemaking initiated for administrative and organizational purposes

Mr. Barry Burnell, Water Quality Division Administrator and Mr. Jason Pappani, Water Quality Standards Lead presented Idaho’s Water Quality Standards, Docket No. 58-0102-1702, including the administrative revisions for deleting outdated language and reorganizing section 210 for aquatic life and human health criteria for toxic pollutants. Changes also included a new section 007 describing the Alaska rule implementation process.

DEQ published the rule in the August 2017 Administrative Bulletin. Negotiated rulemaking was not held because the revisions were not substantive. DEQ received five public comments, and modifications were made based on those comments. No additional costs to the regulated community are associated with this rule, and there were no controversial issues or stringency elements to the rule.

Mr. Burnell and Mr. Pappani recommended adoption of these rules and responded to questions from the Board.

- **MOTION:** Dr. Randy MacMillan moved that the Idaho Board of Environmental Quality adopt as pending rules the Water Quality Standards as presented in the final proposal under Docket No. 58-0102-1702, with the rules becoming final and effective upon the adjournment sine die of the Second Regular Session of the Sixty-Fourth Idaho Legislature if approved by the legislature.
- **SECOND:** Ms. Carol Mascareñas
- **VOICE VOTE:** Motion carried unanimously.

AGENDA ITEM NO. 4: WATER QUALITY STANDARDS, DOCKET NO. 58-0102-1502
Rulemaking initiated to update copper criteria for aquatic life

Mr. Barry Burnell and Mr. Jason Pappani continued with the Water Quality Standards, Docket No. 58-0102-1502, which updates copper criteria for aquatic life. This rulemaking was initiated to update DEQ's existing hardness-dependent copper criteria with a more detailed, modeled approach by using EPA's 2007 CWA section 304(a)-recommended copper criteria. If this rule is not adopted, EPA Region 10 will be obligated to undertake a rulemaking for copper aquatic life criteria in Idaho waters.

DEQ provided the usual opportunities for public involvement with nine negotiated rulemaking and guidance development meetings. Three public comments were received, and modifications were made to section 210.03.c.v of the rule to identify the hierarchy of criteria.

Cost to the regulated community will depend upon the water body and data requirements to determine if permit limits are necessary. Other than the three public comments focusing primarily on the implementing guidance, there were no controversial issues with this rule.

The major changes are in section 210.01, including the new copper footnote and existing copper hardness-based criteria. Section 210.03.c.v. (4) identifies the Biotic Ligand Model.

Mr. Pappani proceeded with a PowerPoint presentation. After the presentation, Mr. Burnell and Mr. Pappani took questions from the Board. The board was concerned about including guidance documents in the rule due to the lack of administrative controls for updates. A 10-minute break was taken to redraft the motion. After the break, Ms. Carlson explained the proposed change. The board had additional questions.

- **MOTION:** Ms. Beth Elroy moved that the Idaho Board of Environmental Quality adopt as pending rules the Water Quality Standards as presented in the final proposal under Docket No. 58-0102-1502, except for the proposed change to IDAPA 58.01.02.004.01, with the rules becoming final and effective upon the adjournment sine die of the Second Regular Session of the Sixty-Fourth Idaho Legislature if approved by the legislature. Guidance documents and technical memorandums are for informational purposes only and are not enforceable as a matter of law.
- **SECOND:** Mr. Kermit Kiebert
- **VOICE VOTE:** Motion carried unanimously.

AGENDA ITEM NO. 5: WATER QUALITY STANDARDS, DOCKET NO. 58-0102-1701
Rulemaking initiated to update selenium criteria for aquatic life

Mr. Barry Burnell and Ms. Stephanie Jenkins, Water Quality Standards Scientist, presented the Water Quality Standards, Docket No. 58-0102-1701, which updates DEQ's selenium aquatic life criteria by using EPA's 2016 CWA section 304(a)-recommended selenium criteria. Similar to the previous rulemaking, if DEQ does not undertake this rulemaking activity, EPA must undertake a rulemaking for Idaho.

Modifications were made to sections 210 and 287 of the rule based on public comments. Section 210 was revised to address comments about rule language on exceeding criteria, and CWA section 304a-recommended criteria discussed "not to exceed" the chronic criteria. Section 287 criteria were also amended with values recalculated based on comments received and additional supporting documentation for fish tissue and lotic waters.

Ms. Jenkins proceeded with a PowerPoint presentation. Mr. Burnell, Ms. Jenkins, and Mr. Don Essig, Surface Water Program Manager, responded to questions from the Board during the presentation. At the end of the presentation, Mr. Michael Thomas, Wyoming Department of Environmental Quality commented. No other comments from the public were made.

- **MOTION:** Dr. Randy MacMillan moved that the Idaho Board of Environmental Quality adopt as pending rules the Water Quality Standards as presented in the final proposal under Docket No. 58-0102-1701, with the rules becoming final and effective upon the adjournment sine die of the Second Regular Session of the Sixty-Fourth Idaho Legislature if approved by the legislature.
- **SECOND:** Mr. Nick Purdy
- **VOICE VOTE:** Motion carried unanimously.

AGENDA ITEM NO. 6: RULES REGULATING THE IDAHO POLLUTANT DISCHARGE ELIMINATION SYSTEM PROGRAM, DOCKET NO. 58-0125-1701

Rulemaking initiated to ensure the IPDES rules remain consistent with federal regulations

Mr. Barry Burnell and Dr. Mary Anne Nelson, IPDES Program Manager, presented updates to the Rules Regulating the Idaho Pollutant Discharge Elimination System Program, Docket No. 58-0125-1701, which ensure the rules remain consistent with federal regulations. Changes included a definition relating to sludge, electronic reporting signature requirements, retaining public comments made during a hearing, fee schedule revisions, identifying two steps for Small Municipal Separate Storm Sewer System (MS4) General Permits, electronic reporting requirements, and sufficiently sensitive test procedures.

Mr. Burnell and Dr. Nelson recommended adoption and took questions from the Board and public. No comments were made.

- **MOTION:** Ms. Carol Mascareñas moved that the Idaho Board of Environmental Quality adopt as pending rules the Rules Regulating the Idaho Pollutant Discharge Elimination System Program as presented in the final proposal under Docket No. 58-0125-1701, with the rules becoming final and effective upon the adjournment sine die of the Second Regular Session of the Sixty-Fourth Idaho Legislature if approved by the legislature.
- **SECOND:** Ms. Beth Elroy
- **VOICE VOTE:** Motion carried unanimously.

AGENDA ITEM NO. 7: RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO, DOCKET NO. 58-0101-1702

Update of federal regulations incorporated by reference

Ms. Tiffany Floyd, Air Quality Division Administrator, and Dr. Carl Brown, Air Quality Rules Coordinator, presented the Rules for the Control of Air Pollution Idaho, Docket No. 58-0101-1702, which incorporate by reference the latest federal regulation. Relevant to Idaho are a number of administrative rule changes on National Ambient Air Quality Standard (NAAQS) implementation. EPA made some technical and editorial corrections to regulations related to source testing of emissions, including updating obsolete testing procedures and adding approved alternatives. EPA updated the state plan requirements for the regional haze by extending the timeline for states to submit their next update from 2018 to 2021. Permit requirement updates affecting Idaho focused on municipal solid waste landfills. EPA promulgated two rules that control gas emissions from landfills, one for new facilities and one for existing facilities.

Ms. Floyd and Dr. Brown responded to questions from the Board. The public had no comments.

- **MOTION:** Mr. Nick Purdy moved that the Idaho Board of Environmental Quality adopt as pending rules the Rules for the Control of Air Pollution in Idaho as presented in the final proposal under Docket No. 58-0101-1702, with the rules becoming final and effective upon the adjournment sine die of the Second Regular Session of the Sixty-Fourth Idaho Legislature if approved by the legislature.
- **SECOND:** Ms. Carol Mascareñas
- **VOICE VOTE:** Motion carried unanimously.

AGENDA ITEM NO. 8: RULES AND STANDARDS FOR HAZARDOUS WASTE DOCKET NO. 58-0105-1701
Update of federal regulations incorporated by reference

Mr. Michael McCurdy, Waste Management and Remediation Division Administrator, and Mr. Matt Alvarado, Hazardous Waste Regulation and Policy Coordinator, presented the Rules and Standards for Hazardous Waste, Docket No. 58-0105-1701, describing the adoption by reference of the federal hazardous waste regulations through June 30, 2017. Mr. McCurdy also introduced Natalie Creed, Hazardous Waste Unit Manager, who recently replaced Brian Monson.

Mr. Alvarado explained the modification included hazardous waste export-import revisions that provide greater protection to human health and the environment for transboundary movements of hazardous waste shipments. The changes will require electronic reporting to EPA.

Revisions to the hazardous waste generator improvement regulation made the rules more user-friendly to the regulated community. The changes also provide greater flexibility for hazardous waste generators to manage their hazardous waste in a cost-effective and protective manner.

Mr. Alvarado also explained other technical corrections. Mr. McCurdy and Mr. Alvarado took questions from the Board, and there were none.

- **MOTION:** Ms. Beth Elroy moved that the Idaho Board of Environmental Quality adopt as pending rules the Rules and Standards for Hazardous Waste as presented in the final proposal under Docket No. 58-0105-1701, with the pending rules becoming final and effective upon the adjournment sine die of the Second Regular Session of the Sixty-Fourth Idaho Legislature if approved by the legislature.
- **SECOND:** Mr. Kermit Kiebert
- **VOICE VOTE:** Motion carried unanimously.

AGENDA ITEM NO. 9: PRESENTATION BY STATE REVOLVING FUND PROGRAM
Conceptual presentation on originating more funds through a partnership with the Idaho Bond Bank

Mr. Barry Burnell and Mr. Tim Wendland, Loan Program Manager, gave a presentation on the State Revolving Fund Program on originating more funds through a partnership with the Idaho Bond Bank.

Mr. Burnell and Mr. Wendland responded to questions from the Board.

Although this concept is not a Board-voted item, Chairman Boling said it is an option worth pursuing.

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

Ms. Paula Wilson, Administrative Rules Coordinator, reviewed the rule docket status report and reported there are no contested cases at this time.

AGENDA ITEM NO. 11: SET 2018 BOARD MEETING SCHEDULE

The schedule for 2018 Board meeting was set as follows:

- May 16 and 17 in Twin Falls, Idaho
- November 14 and 15 in Boise, Idaho—if only one day is needed, we will meet on November 15.

AGENDA ITEM NO. 12: ELECTION OF OFFICERS

Chairman Boling opened the floor to discuss the election of officers. After a short discussion, the Board decided to retain the current officers in 2018.

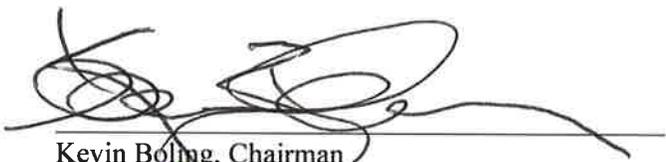
- **MOTION:** Mr. Nick Purdy moved that the Idaho Board of Environmental Quality retain the current officers as the 2018 Board officials: Mr. Kevin Boling, Chair; Ms. Beth Elroy, Vice-Chair; and Mr. Kermit Kiebert, Secretary.
- **SECOND:** Dr. Randy MacMillan and Ms. Carol Mascareñas
- **VOICE VOTE:** Motion carried unanimously.

AGENDA ITEM NO. 13: LOCAL REPORTS AND ITEMS BOARD MEMBERS MAY WISH TO PRESENT

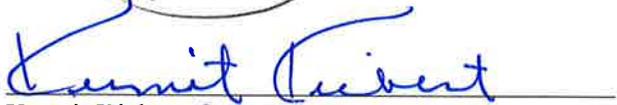
The Board did not have any additional items to present.

ADJOURNMENT

The meeting adjourned at 1:43 p.m.



Kevin Boling, Chairman



Kermit Kiebert, Secretary



Rosie Alonzo, Assistant to the Board and Recorder