



State of Idaho  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
BOARD OF ENVIRONMENTAL QUALITY

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Curt Fransen, Director

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**IDAHO BOARD OF ENVIRONMENTAL QUALITY**

**MINUTES**

**May 3, 2012**

The Board of Environmental Quality convened on May 3, 2012, at 9:00a.m. at:

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

**BOARD MEMBERS PRESENT**

Nick Purdy, Chair  
Carol Mascareñas, Vice-Chair  
Dr. Joan Cloonan, Secretary  
Kermit Kiebert, Member  
John McCreedy, Member

**BOARD MEMBERS ABSENT**

Dr. John R. "Randy" MacMillan, Member  
Kevin Boling, Member

**DEPARTMENT OF ENVIRONMENTAL QUALITY STAFF PRESENT**

Curt Fransen, Director  
Douglas Conde, Senior Deputy Attorney General, DEQ  
Paula Wilson, Rules Coordinator  
Rosie Alonzo, Management Assistant, Assistant to the Board  
Jess Byrne, Deputy Director  
Lisa Carlson, Deputy Attorney General – DEQ  
Martin Bauer, Administrator, Air Quality Division  
Orville Green, Administrator, Waste Management & Remediation Division  
Barry Burnell, Administrator, Water Quality Division  
Tim Wendland, Loan Program Manager  
Kari Kostka, Policy Analyst  
David Luft, Regional Airshed Manager  
Jonathan Pettit, Vehicle I/M Coordinator  
Ed Hagan, Ground Water Program Manager  
Amy Williams, Source Water Program Analyst  
Katherine Elliott, Source Water Protection Implementation Coordinator  
Joanna Hahn, Environmental Specialist

**OTHERS PRESENT:**

Lynn Tominaga, Idaho Ground Water Association (IGWA)

Jack Lyman, Idaho Mining Association (IMA)

Courtney Washburn, Idaho Conservation League (ICL)

Hugh O’Riordan, Givens Pursley

Bob Naerebout, Idaho Dairymen’s Association (IDA)

Mike Backe, Olympus Technical Services, Inc.

Pat Barclay, Idaho Council Industry & Environment (ICIE)

Dave Bjorneberg, United States Department of Agriculture, Agriculture Research Services

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

**CALL TO ORDER AND ROLL CALL**

Chairman Nick Purdy called the meeting of the Idaho Board of Environmental Quality (Board) to order at 9:00a.m. Roll call was taken. Dr. Randy MacMillan and Kevin Boling were absent; however, there was a quorum for the meeting to proceed.

Chairman Purdy opened the floor for the public to address the Board on topics not specifically on the agenda. There were none.

**AGENDA ITEM NO. 1: DIRECTOR’S REPORT**

Director Curt Fransen reminded the Board that at the previous meeting, he was introduced as the interim director. Since then, Governor Otter asked him to stay on as the permanent Director of the Department of Environmental Quality. Director Fransen also introduced Mr. Jess Byrne who has taking on the role of deputy director. Director Fransen stated that he does not anticipate any changes to staffing or DEQ’s organization in the near future. He plans on continuing the progress and the work Director Hardesty had in place over the last seven years.

Director Fransen continued with his report:

**Legislative Update:**

**Budget Request** – The agency’s budget request was approved by the legislature. In addition to DEQ’s regular ongoing base funding, the appropriation included funding or spending authority for the following:

- 1) \$398,700 ongoing from the Water Pollution Control Account for BURP monitoring.
- 2) \$100,000 one-time for some outstanding CDA Basin Yard Remediation ARRA payments.
- 3) \$200,000 one-time for the Lake Pend Oreille Brownfield Coalition (ARRA).
- 4) \$50,000 ongoing “pass through” funding for the Pend Oreille Lakes Commission.
- 5) \$50,000 ongoing “pass through” funding for the Bear Lake Regional Commission.
- 6) An additional 2% for across the board salary increases for employees meeting performance standards.

**Legislative Rules Review** – All of DEQ's rules were approved.

**Legislation of Interest**

- 1) **SCR116** – This bill authorized the Legislative Council to appoint an interim legislative committee to study the feasibility and means necessary for the State of Idaho to obtain NPDES primacy. This resolution did not pass, however, it is DEQ's understanding that the legislature still plans on looking into this issue through the Natural Resources Interim Committee over the summer. DEQ will be assisting the committee, as needed.
- 2) **S1366** – Amends law to provide statutory procedures for negotiated rulemaking and to provide for notice of rulemaking to be placed on an agency's website. This bill passed; however, it will have little impact on DEQ's rulemaking process because it was essentially modeled after DEQ's existing practice. DEQ will be initiating rulemaking later this year to square up the agency's procedures with this legislation.
- 3) **S1231** – Amends Motor Vehicle Inspection and Maintenance Program to codify the program's allowance for repair waivers and hardship waivers. It also requires DEQ to make recommendations to the legislature next year to determine whether the program should be continued, modified, or terminated. Previously, DEQ was on a five-year rotation for this report. This legislation shortens the first report to three-years and then every five years following the initial report.

**UST PROGRAM PRIMACY**

Since the last Board meeting, DEQ has received final state program authorization approval from EPA to run the Underground Storage Tank Program.

**CANYON COUNTY CONTESTED CASE JUDICIAL APPEAL**

The decision of the Board on the Canyon County Motor Vehicle Inspection Program was appealed. It is in the Third District Court in Canyon County with Judge Molly Husky where Canyon County has filed its preliminary brief. DEQ will respond by May 24 and Canyon County will then be able to file a reply by June 14. The judge indicated she will run on briefs unless the parties ask for oral argument. None have been scheduled to date.

Director Fransen stood for and responded to questions from Board members.

Ms. Carol Mascareñas inquired on the change of five-year to three-year review and if that is on-going every three years or just for this period.

Director Fransen inquired of Mr. Martin Bauer who said DEQ is required to give the report in 2013 and every five years after that.

**AGENDA ITEM NO. 2: ADOPTION OF MEETING MINUTES**

Minutes of November 9 and 10, 2011.

- **MOTION:** Dr. Joan Cloonan moved that the Board adopt the November 9 and 10, 2011 minutes as prepared.
- **SECOND:** Mr. Kermit Kiebert.  
**VOICE VOTE:** Motion carried unanimously.
  
- **MOTION:** Mr. John McCreedy moved that the Board adopt the February 16, 2012 minutes as prepared.
- **SECOND:** Dr. Joan Cloonan.  
**VOICE VOTE:** Motion carried unanimously.

**AGENDA ITEM NO. 3: RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO, DOCKET NO. 58-0101-1202 (TEMPORARY RULE)**

*(REVISED THE MINIMUM STANDARDS FOR THE MOTOR VEHICLE INSPECTION AND MAINTENANCE PROGRAM BY ALLOWING THE GOVERNING AUTHORITY TO GRANT EXTENSIONS FOR MEETING EMISSION TESTING REQUIREMENTS AND ELIMINATING THE TEST AND REPAIR RESTRICTIONS ON LICENSED INSPECTION STATIONS.)*

Mr. Martin Bauer, Air Quality Division Administrator, introduced himself. He proceeded to give a summary of this temporary rule which modifies the existing Motor Vehicle Inspection and Maintenance Program. This proposed rule addressed two issues: First, to eliminate test and repair restrictions on licensed inspection stations. This was originally put in place because there was fear mechanics would purposely fail vehicles to reap costs for unneeded repairs. It is believed that fraudulent testing is no longer a major concern due to the testing equipment currently being used in both Canyon County and Kuna. Second, this rule provides the governing authority an ability to provide testing waivers for vehicles or vehicle owners temporarily located out of the testing area that cannot easily return for testing. Mr. Bauer gave the example of military personnel.

This proposed rule is being done as a temporary rule and will take effect June 6, 2012, if adopted. It does not regulate an activity not regulated by the federal government nor is it more stringent than federal regulations. There are no additional costs to the regulated community for these changes. This program is broader in scope than the federal regulations as it applies to sources in an area not yet designated nonattainment. At closing, Mr. Bauer stood for questions from the Board.

Chairman Purdy stated that he read there would be a public hearing in October. Mr. Bauer said that is correct as it goes through the process for a permanent rule. He referred to Ms. Paula Wilson for further comment. Ms. Wilson said there is a federal requirement that most air rules have a public comment. There was no further comment from the Board.

Chairman Purdy asked if there were any comments from the public on this temporary rule. There were none.

- **MOTION:** Dr. Joan Cloonan moved that the Idaho Board of Environmental Quality adopt as temporary rules the Rules for the Control of Air Pollution in Idaho as presented under Docket No. 58-0101-1202 with an effective date of June 6, 2012.
- **SECOND:** Mr. John McCreedy.  
**ROLL CALL VOTE:** Chairman Purdy, aye; Dr. Joan Cloonan, aye; Carol Mascarenas, aye; Kermit Kiebert, aye; and John McCreedy, aye. Dr. Randy MacMillan and Kevin Boling were absent. Motion carried unanimously.

Mr. McCreedy had a general question on the vehicle testing program and asked if DEQ had a sense whether or not the program is working. Mr. Bauer said the program is working. The reduction in emissions is greater than DEQ originally forecasted. The reason for these numbers is that when the models were first run for a decrease in emissions, they were based on national defaults for motor pool composition. However, the vehicles in Canyon County are older than those used in national default numbers. When vehicles fail and are repaired and retested, the emissions drop. As the program moves on in years, reductions will be less because the motor pool will have cleaner vehicles.

#### **AGENDA ITEM NO. 4: FY2013 STATE WASTEWATER LOAN PRIORITY LIST**

Mr. Barry Burnell, Water Quality Division Administrator, introduced himself and Mr. Tim Wendland, Grants and Loans Program Manager. He explained the process to develop the Intended Use Plan for the Grant and Loan Program. They will present the next four agenda items for to the Board for review and approval.

Mr. Wendland proceeded to go over the FY2013 State Wastewater Loan Priority List which is incorporated into the annual Intended Use Plan. He explained there were some technical corrections made to the initial draft Intended Use Plan and Priority List.

A public comment was received from the City of Jerome. Initially, the City of Jerome did not have enough information on the treatment system cost to effectively rate the project. They provided additional information regarding using a phased-in approach which gave them points and resulted in their rank moving higher on the priority list.

DEQ received a comment from the Kootenai School District, but they did not present new information that would change their points. DEQ did not think they were ready to proceed because the district did not have a bond passed or a facility plan prepared, so consequently, they did not move onto the fundable list.

DEQ received about fourteen times more funding requests than resources available to fund the wastewater projects. Mr. Wendland reported that there is a probability that some of the existing SRF loans will be refinanced through commercial banks in the next couple of months allowing DEQ to see a fresh influx of available funds into the wastewater loan program.

One major change from last year is in DEQ's interest rate structure. Last year's interest rate was at 1.75% and it fell as low as 0%. DEQ has had concerns since the ARRA stimulus period when 0% loans were issued; concerns that recipients would be slow to close their loans because there

is no interest being accrued. Those concerns are starting to actualize. To address the issue, this year DEQ's interest rate is set at 2.25% with a floor of 1%.

There are a couple differences on the wastewater loan fundable list from what is on the priority list for the two projects DEQ could fund this year; Moore Water & Sewer Association and the City of Fruitland. Both amounts are considerably lower on the fundable list than the priority list because USDA Rural Development has joint funding with DEQ. Rural Development is picking up about half the cost for Fruitland and approximately two-thirds the cost for Moore. This is good for the state because if Rural Development is successful in placing their dollars into the community, they get dibs on some unallocated resources on the national level that they can bring into Idaho.

Mr. Wendland proposed adopting of the FY2013 State Wastewater Loan Priority List. He stood for and responded to questions from Board members.

Dr. Cloonan referred to the project ranking on the fundable list and asked how one project ranks number one and the other ranks number fourteen. Mr. Wendland replied that in those years when DEQ has funds available that are smaller in comparison to the needs, DEQ assesses the readiness to proceed so that dollars can be put on the ground quickly and efficiently. Many of the projects between one and fourteen either required greater resources than were available or the projects were not ready to proceed. The City of Fruitland and the Moore Water & Sewer Association were both ready to proceed.

Ms. Mascareñas questioned the Priority List Comprehensive Listing and what the significance is to having original rating points as opposed to current rating points. She continued that the City of Jerome has zero points even though they are ranked 15. Mr. Wendland apologized, saying that it was a typo and should have been changed. Corrections have been made on the iteration ready to go out after this meeting. The actual points are somewhere between 140 and 173. If DEQ comes up with resources during the year and if the City of Jerome is ready to proceed with their project, then having their points reconsidered could possibly put them in line to get funding during the upcoming year.

Mr. John McCreedy asked if the proposed motion on the Loan Priority List is the approval of Attachment I or Attachment II or is it for both attachments. Mr. Wendland said he believed it was for both. Mr. Barry Burnell and Mr. Doug Conde confirmed that it was both the Fundable Listing (Attachment I) and the Priority Listing (Attachment II).

Mr. John McCreedy inquired on the commercial banks loans, asking if the banks are loaning directly to the project or whether the commercial banks loan directly to DEQ and DEQ loans to the project. Mr. Wendland responded that the banks would loan directly to the project. Mr. Burnell clarified that the commercial banks would be looking at loans that DEQ has closed and are in the repayment phase. Basically, it is refinancing at a marginally lower interest rate and with an extended term. DEQ would receive the lump sum of the loan balance and places those funds back into DEQ's portfolio to loan to the next highest ranked project that is ready to proceed.

Mr. McCreedy asked for an explanation on the principle forgiveness on the fundable list. He wanted to know if it is when the project makes the loan payments on time and in full or if that is

just part of the program. Mr. Wendland explained that DEQ is required by the capitalization grant with the EPA to basically give away a certain amount of dollars by the end of our annual cycle. DEQ cannot wait until the project is done with their repayment period. Mr. Burnell further explained that DEQ proportions the percent of principal forgiveness among those projects being funded and it is based on the amount of funds they receive from DEQ. If a project decides to be funded through another source and does not accept DEQ's loan then that amount of principle forgiveness is now unallocated. DEQ re-racks it at the end of the year to redistribute that principle forgiveness again by proportion to those projects who actually signed loans with DEQ.

Mr. Wendland pointed out the he did not believe the commercial banks are looking at the loans DEQ has issued for the last three years or so due to the low interest rates that DEQ offered.

Mr. Conde addressed Mr. McCreedy's question once again on the approval of the lists. He said to clearly identify the motion, it must be said that the Board is approving the Loan Priority List as presented in Attachments I and II as presented by the Department of Environmental Quality.

There were no further questions or comments so Chairman Purdy asked for a motion.

- **MOTION:** Ms. Carol Mascareñas moved that the Board of the Idaho Board of Environmental Quality approve the FY2013 State Wastewater Loan Priority List as presented in the Attachments I and II by the Department of Environmental Quality.
- **SECOND:** Dr. Joan Cloonan.
- **VOICE VOTE:** Motion carried unanimously.

#### **AGENDA ITEM NO. 5: FY 2013 STATE WASTEWATER PLANNING GRANT PRIORITY LIST**

Mr. Tim Wendland continued with the presentation of the 2013 State Wastewater Planning Grant Priority List. The list was developed over a six month process in a manner similar but slightly simpler than the Wastewater Loan Priority List. The grant process does not require a separate funding list attachment or a readiness to proceed. The project only needs to hire a consulting engineer to proceed. DEQ did not receive any comments on this particular priority list. Mr. Wendland proposed the adoption of the 2013 State Wastewater Planning Grant Priority List and stood to answer any questions from the Board.

Mr. Burnell added that only \$250,000 was available for the planning grants this year. DEQ went down the list to rank number 6, Clark Fork Wastewater System, which totals about \$216,000 plus, leaving a little over \$33,000. This meant that South Fork Sewer District and City of Emmett Wastewater Treatment were skipped due to the DEQ grant amount needed. We are able to pick up White Bird for \$15,000. At that point, the balance was about \$18,000 which is not sufficient to do any other projects. DEQ does hold some in reserve for grant amendments for projects that may take a little bit longer or there might be a slight amendment to the grant activity which requires additional funds.

Dr. Joan Cloonan commented that the grant amount looks to be fairly consistently half of the total project cost. Mr. Burnell responded that it is a 50/50 grant project cost.

There were no further questions or comments from the Board so Chairman Purdy asked for a motion.

- **Motion:** Dr. Joan Cloonan moved that the Idaho Board of Environmental Quality approve the FY2013 State Wastewater Planning Grant Priority List as presented by the Department of Environmental Quality.
- **Second:** Mr. Kermit Kiebert.
- **Voice Vote:** Motion carried unanimously.

#### **AGENDA ITEM NO. 6: FY2013 STATE DRINKING WATER LOAN PRIORITY LIST**

Mr. Wendland next gave a brief introduction of the FY2013 State Drinking Water Loan Priority List. The list was developed over a six month long process similar to the Wastewater Loan Priority List. Attachments I and II are incorporated into the annual Intended Use Plan which is submitted to the EPA in accordance with capitalization grant requirements. DEQ did have some minor technical corrections and did not receive any comments on the Drinking Water Loan Priority List. The Drinking Water Loan Program has more than sufficient resources to fund the entire priority list. The interest rate structure for the Drinking Water Loan Priority List mirrors the Wastewater Loan Priority List except for a slightly lower percentage rate is offered for safe drinking water compliance issues compared to other loans on the drinking water list. Mr. Wendland proposed adoption of the 2013 State Drinking Water Loan Priority List and stood for questions from the Board.

Ms. Mascareñas inquired about Attachment II and why ranking number 7 with 44 rating points is ranked above number 8 with 51 rating points. Mr. Wendland and Mr. Burnell indicated that it is an error.

Mr. McCreedy commented that the City of Star lost out. Mr. Wendland explained the City of Star wanted to do work that would set the stage for growth. There are some prohibitions in our CFR that governs the state revolving fund. One of them is that we cannot fund a program that is primarily for growth. While there is an allowance to fund some growth if it is the minority of the cost, DEQ cannot fund the project for growth if it takes up a majority of the cost.

Chairman Purdy asked if all projects on the Priority list will get funded. Mr. Burnell replied yes, other than the City of Star. Chairman Purdy pointed out that Meridian Heights Water and Sewer rating points were at zero. Mr. Wendland said that even if a project has a zero rating, if they come forward in time, DEQ can fund them. The reason the Meridian Heights Water and Sewer has zero points is because the facility plan was not developed. They earn points once the facility plan is completed, but it is questionable whether they will take all the preparatory steps for the upcoming fiscal year.

Ms. Mascareñas referred her question to Mr. Conde. She asked, when the Board makes the motion to approve, since the projects are all funded, does it matter if they are not in the right priority order at least with respect to rank number 7 and 8? Mr. Conde responded that it does not matter because the projects are all funded, with the exception of the City of Star. He asked that the Board again identify that both Attachments I and II are being approved.



Chairman Purdy called for a motion which will include the attachments.

- **MOTION:** Mr. John McCreedy moved that the Idaho Board of Environmental Quality approve the FY2013 State Drinking Water Loan List as presented in the Attachments I and II by the Department of Environmental Quality.
- **SECOND:** Dr. Joan Cloonan.
- **VOICE VOTE:** Motion carried unanimously.

**AGENDA ITEM NO. 7: FY 2013 STATE DRINKING WATER PLANNING GRANT PRIORITY LIST**

Mr. Wendland went on to present the FY2013 State Drinking Water Planning Grant Priority List. The list was developed over a six month process in a manner similar to but slightly simpler than the Drinking Water Loan Priority List. The list is simpler because it does not require attachments or a readiness to proceed, it is just a list. DEQ did not have any questions raised on this priority list. The cost for drinking water planning efforts is lower than that for wastewater, and DEQ was able to fund the majority of this list, numbers 1 through 12, with the same amount of money. Mr. Wendland proposed adoption of the 2013 State Drinking Water Planning Grant Priority List. He stood for questions.

There were no questions from the Board.

- **MOTION:** Ms. Carol Mascareñas moved that the Idaho Board of Environmental Quality approve the FY2013 State Drinking Water Planning Grant Priority List as presented in the Attachments I and II by the Department of Environmental Quality.
- **SECOND:** Dr. Joan Cloonan.
- **VOICE VOTE:** Motion carried unanimously.

**AGENDA ITEM NO. 8: CONTESTED CASE AND RULE DOCKET STATUS REPORT**

Ms. Paula Wilson, Rules Coordinator, reviewed the current contested case and rule docket status report. A reference copy of the promulgation status report is attached to the minutes on file.

**AGENDA ITEM NO. 9: GROUND WATER DISCUSSION**

Chairman Purdy explained that back in June of 2011, the Board had a ground water discussion about concerns with nitrate concentrations in Jerome and Gooding counties. During the meeting, the Board talked about looking into the issue further and the USDA-Agriculture Research Services and the Idaho Dairyman's Association offered to help. Today's presentation is going to outline a potential option for further studying the issue. Chairman Purdy asked Mr. Bob Naerebout, Executive Director of the Idaho Dairyman's Association, to make introductions for today's presentation.

Mr. Naerebout mentioned that this is a continuation of the ground water discussion to identify historical data on nitrate concentrations and the impacts on the aquifer and water resources. He then introduced Dr. Dave Bjerneberg of USDA-Agriculture Research Services who is the

research lead. Mr. Mike Backe was introduced as the consultant and Hugh O’Riordan as the attorney for the Idaho Dairymen’s Association. Mr. Bob Naerebout then turned the presentation over to Dr. Dave Bjorneberg.

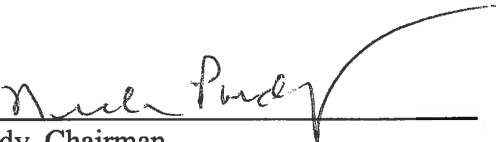
Dr. Bjorneberg proceeded with a PowerPoint presentation and discussed what, as a research center, they can do to help look into this issue. (See attachment)

**AGENDA ITEM NO. 10: LOCAL REPORTS AND ITEMS BOARD MEMBERS MAY WISH TO PRESENT**

Chairman Purdy asked if there were any concerns or issues which the Board would like to present. He commented on the tightness of the budget and its effects at the DEQ Twin Falls Regional Office, particularly in training dollars and with retiring staff. Director Fransen responded that appropriations received this year are the same as the previous year. DEQ is down 20% in general funds and it is clear funds will not be restored anytime soon. Training has taken a hit in the last couple years, but DEQ does have a better system in place with video conferencing which may help. DEQ is also looking at its training regimen organization and sequencing to make it better.

There were no other items to present.

**THE MEETING ADJOURNED AT 11:05 A.M.**

  
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Nick Purdy, Chairman

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Joan Cloonan, Secretary

  
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Rosie Alonzo, Assistant to the Board and Recorder