



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 18, 2015

The Idaho Board of Environmental Quality convened on November 18, 2015, at 9:00 a.m. at:

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

BOARD MEMBERS PRESENT

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

DEPARTMENT OF ENVIRONMENTAL QUALITY STAFF PRESENT

John H. Tippets, Director
Douglas Conde, Sr. Deputy Attorney General - DEQ, Legal Counsel to the Board
Paula Wilson, Rules Coordinator
Rosie Alonzo, Management Assistant, Assistant to the Board
Jess Byrne, Deputy Director
Barry Burnell, Administrator, Water Quality Division
Tim Wendland, Grants and Loans Program Manager
Tiffany Floyd, Administrator, Air Quality Division
Orville Green, Administrator, Waste Management & Remediation Division
Matt Alvarado, Hazardous Waste Regulation and Policy Coordinator
Kari Kostka, Policy Analyst
Mary Anne Nelson, IPDES Program Manager
Don Essig, Water Quality Standards Lead
Susan Hamlin, Deputy Attorney General - DEQ
Stephen Barry, IPDES Compliance, Inspection & Enforcement Lead
Troy Smith, IPDES Rules/Guidance Coordinator
Carl Brown, Air Quality Rules Coordinator
Michael McIntyre, Surface Water Program Manager

OTHERS PRESENT:

Jack Lyman, Idaho Mining Association
Lynn Tominaga, Idaho Rural Water Association
Justin Hayes, Idaho Conservation League
David Wynkoop, Sherer & Wynkoop, LLP

- ❖ 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 John McCreedy called the meeting of the Idaho Board of Environmental Quality (Board) to order at 9:00 a.m. Roll call was taken with all Board members present.

Chairman McCreedy opened the floor for the public to address the Board on topics not specifically on the agenda. No topics were raised.

AGENDA ITEM NO. 1: DIRECTOR'S REPORT

Chairman McCreedy turned the meeting over to Director John Tippetts for the Director's Report. Being newly appointed, Director Tippetts gave a brief introduction of himself.

Director's Priorities

Director Tippetts outlined four priorities he hopes to emphasize during his tenure: safety; always treating others with dignitary and respect; continuous improvement; and a service perspective focused on helping the citizens of Idaho understand and comply with the law.

- **Budget** – DEQ's fiscal year 2017 budget is approximately \$66.5 million which constitutes a 7.7% increase over fiscal year 2016. The largest items contributing to the increase include a 1% place-holder for employee raises (required of all agencies), a need to cover the twenty-seventh payroll (which occurs once every ten years), \$310,000 for replacement items such as vehicles and computers, \$461,400 for the IPDES program, and \$160,000 to augment decreasing federal funding for the Underground Storage Tank program.
- **Proposed Legislation** – DEQ anticipates proposing seven pieces of legislation this session. These include three IPDES bills to extend protection of trade secrets to water quality records, clarify DEQ's enforcement authority for NPDES permits and establish a records review permit appeals process, and clarify DEQ's NPDES regulatory authority for dairy and beef cattle operations. DEQ will also ask for increased flexibility when prioritizing Total Maximum Daily Loads (TMDLs), authority to charge fees to support the Underground Storage Tank program, and authority to invest certain funds with the Endowment Fund Investment Board rather than the State Treasurer's Office. There is also a slight possibility DEQ will again request a 30-year loan repayment option for State Revolving Fund loans to drinking water systems.

- **Major Upcoming Issues:**
 - The Clean Power Plan proposed by EPA under section 111(d) of the Clean Air Act mandates state-specific carbon dioxide reductions by the year 2030. The original draft rule required Idaho to demonstrate a 30 percent total reduction. Through work with DEQ and other agencies, however, EPA reduced Idaho's requirement to an eight percent reduction level. The Governor is debating whether to join 27 other states in a lawsuit opposing the plan, but no final decision has been made.
 - EPA recently lowered the National Ambient Air Quality Standard (NAAQS) for ozone from 75 parts per billion (ppb) to 70 ppb. The crop residue burning community is concerned the revision will reduce the number of days they are allowed to burn. The Crop Residue Burn Advisory Council is looking into the matter.
 - Idaho's fish consumption and human health criteria rule is another issue but will be addressed later during the meeting.

Director Tippetts concluded his report and responded to questions from Board members.

AGENDA ITEM NO. 2: APPROVAL OF MEETING MINUTES

Minutes of May 20, 2015 Board Meeting.

- **MOTION:** Ms. Beth Elroy moved that the Idaho Board of Environmental Quality adopt the minutes of May 20, 2015 as prepared.
- **SECOND:** Ms. Carol Mascareñas.
- **VOICE VOTE:** Motion carried unanimously.

AGENDA ITEM NO. 3: RULES REGULATING THE IDAHO POLLUTANT DISCHARGE ELIMINATION SYSTEM PROGRAM, DOCKET NO. 58-0125-1401 (PENDING RULE)
RULEMAKING INITIATED TO IMPLEMENT IDAHO CODE §39-175C WHICH DIRECTED DEQ TO SEEK APPROVAL OF A NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PROGRAM

Mr. Barry Burnell, Water Quality Division Administrator, introduced himself and Dr. Mary Anne Nelson, IPDES Program Manager. He explained that House Bill 406 in 2014 directed DEQ to develop a primacy application for the NPDES program in Idaho for submittal to EPA by September 1, 2016. Mr. Burnell then presented the Rules Regulating the Idaho Pollutant Discharge Elimination System Program, Docket No. 58-0125-1401, developed through negotiated rulemaking. He described the elements of this rulemaking including public participation, fiscal impacts, incorporation by reference, and stringency requirements, then responded to questions from the Board.

Dr. Nelson continued the presentation by summarizing the rule chapter while highlighting sections incorporated by reference. She covered the permit application process and DEQ's permitting authority which included items such as the effect of a permit, duration of a permit, obligation to obtain a permit, and permit prohibitions. Dr. Nelson explained that the fee schedule was negotiated with the stakeholder committee as well. She reviewed the permit appeals process and additional sections in the rule that cover general permits, changing components of a permit, permit conditions,

pretreatment and biosolids, compliance, enforcement, and the administrative record. Dr. Nelson mentioned that three references were missed when “public hearing” was changed to “public meeting” and proposed that subsections 010.72, 204.01a, and 204.17 be revised accordingly. Dr. Nelson, Mr. Burnell, and Mr. Conde then responded to questions from the Board.

Dr. MacMillan stated that he understands DEQ’s intent is to regulate aquaculture sludge the way EPA has been regulating it, but looking at the definitions of sewage and sewage sludge in DEQ’s proposed rules, it gives the impression that fish farm sewage could be considered sewage sludge. A discussion followed with response from Mr. Burnell, Mr. Conde, and Dr. Nelson. DEQ proposed incorporating by reference 40 CFR 122.24 to cover Concentrated Aquatic Animal Production (CAAP) operations under general and individual permits. Incorporating this section by reference allows DEQ to proceed with the application for delegated authority for the NPDES program while providing stability for those affected by CAAP regulations. Dr. MacMillan asked that the minutes reflect his question and the response.

Mr. Burnell responded to several additional questions from Chairman McCreedy. The Chairman opened the floor to members of the public to address the Board, but there were no comments.

Chairman McCreedy explained that supporting statutory changes are needed to make this rule fully implementable and that it should be noted in the record. Mr. Conde suggested phrasing the motion so it reflects that the rule is conditional upon legislative approval. A ten-minute break was taken to draft a revised motion. The meeting was called back to order and the Chairman asked for a motion.

➤ **MOTION:** Dr. Randy MacMillan 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. 58-0125-1401 and revised as follows:

Subsection 010.72, 204.01.a, and 204.17 revised by replacing the word “hearing” with “meeting.”

The pending rules will become final and effective upon the adjournment sine die of the second regular session of the sixty-third Idaho legislature if approved by the legislature. Adoption of Section 002 and 204 is contingent upon the 2016 Idaho legislature enacting legislation modifying Idaho law with respect to the public records law and the IPDES appeals process.

➤ **SECOND:** Mr. Nick Purdy.

➤ **VOICE VOTE:** Motion carried unanimously.

AGENDA ITEM NO. 4: WATER QUALITY STANDARDS, DOCKET NO. 58-0102-1501 (PENDING RULE)

USE ATTAINABILITY ANALYSIS (UAA)

Mr. Burnell introduced Mr. Don Essig, Water Quality Standards Lead, before they presented the Water Quality Standards (WQS) Use Attainability Analysis (UAA) Rule, Docket No. 58-0102-1501. They explained that this rulemaking came in response to an Idaho Office of Performance Evaluations 2014 evaluation report which recommended DEQ complete its UAA guidance document. DEQ committed to completing the guidance once a basis was established in the WQS.

DEQ received comments from three groups during the rulemaking process but opted not to make changes to the proposed rule because the language came directly from statute or the federal Clean Water Act.

The presenters explained that the cost to the regulated community will be dependent upon the specific waterbody and data requirements. They also explained the controversy over language addressing man-made and private waters and that this language was removed during negotiations and a subcommittee was formed to address the issue. Mr. Burnell and Mr. Essig added that another element not included in the rule is EPA's "highest attainable use concept" as DEQ needs to better understand and work through this concept before adding it. They then responded to questions from the Board.

Chairman McCreedy asked for comments from the public, but there were none.

- **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. 58-0102-1501 with the pending rules becoming final and effective upon the adjournment sine die of the second regular session of the sixty-third Idaho legislature if approved by the legislature.
- **SECOND:** Mr. Kevin Boling.
- **VOICE VOTE:** All Board members voted in favor of the pending rule with the exception of Mr. Nick Purdy. Motion carried by majority vote.

AGENDA ITEM NO. 5: GROUND WATER QUALITY RULE, DOCKET NO. 58-0111-1501 (PENDING RULE)
RULEMAKING INITIATED TO MAKE REVISION FOR CONSISTENCY WITH HOUSE BILL 197.

Mr. Burnell presented the Ground Water Quality Rule under Docket 58-0111-1501. He explained that this rule came in response to House Bill (HB) 197 passed during the 2015 legislative session and deals with mining points of compliance. HB197 included an emergency clause making it effective on June 1, 2015, and requiring the Board to adopt a temporary rule. Mr. Burnell explained how the legislation clarified that degradation of ground water caused by mining activities is allowed at the point of compliance as long as the mine operator uses best management practices to the maximum extent practicable. There were no questions from the Board or comments from the public.

- **MOTION:** Ms. Beth Elroy moved that the Idaho Board of Environmental Quality adopt as a pending rule the Ground Water Quality Rule as presented in the final proposal under Docket No. 58-0111-1501 with the pending rule becoming final and effective upon the adjournment sine die of the second regular session of the sixty-third Idaho legislature if approved by the legislature.
- **SECOND:** Ms. Carol Mascareñas.
- **VOICE VOTE:** Motion carried unanimously.

AGENDA ITEM NO. 6: IDAHO RULES FOR PUBLIC DRINKING WATER SYSTEMS, DOCKET NO. 58-0108-1501 (PENDING RULE)
RULEMAKING INITIATED TO ADOPT INTO STATE RULES THE FEDERAL REVISED TOTAL COLIFORM RULE

Mr. Burnell introduced Ms. Jerri Henry, Drinking Water Program Manager, then presented the Idaho Rules for Public Drinking Water Systems, Docket No. 58-0108-1501. He explained that Idaho is required to adopt into state rules the federal Revised Total Coliform Rule by April 2016 to maintain primacy. He then outlined key changes to the rule, including addition of an E. coli maximum contaminant level (which reduces total coliform), start-up requirements for systems that operate

seasonally, and incentives such as reduced monitoring. He addressed other minor changes made to provide clarity and remove unnecessary requirements. Mr. Burnell and Mr. Conde then responded to questions from the Board before adjourning for a 45 minute lunch break.

The Board reconvened after lunch and there was discussion on the removal of reference dates with a new motion. Mr. Burnell and Ms. Henry responded to additional questions.

- **MOTION:** Ms. Beth Elroy moved that the Idaho Board of Environmental Quality adopt as pending rules the Idaho Rules for Drinking Water Systems as presented in the final proposal under Docket No. 58-0108-1501 and revised as follows:
Subsection 100.01, 100.10, 300.05.d.iii(3), and 552.08.a revised by removing reference dates. The pending rule will become final and effective upon the adjournment sine die of the second regular session of the sixty-third Idaho legislature if approved by the legislature.
- **SECOND:** Dr. Randy MacMillan.
- **VOICE VOTE:** Motion carried unanimously.

AGENDA ITEM NO. 7: RULES FOR ADMINISTRATION OF WASTEWATER TREATMENT FACILITY GRANTS, DOCKET NO. 58-0104-1501 (PENDING RULE)
RULEMAKING INITIATED TO COMPLY WITH A RECENT REVISION TO THE CLEAN WATER ACT THAT REQUIRES PLANNING DOCUMENTS.

Mr. Burnell introduced Mr. Tim Wendland, Grants and Loans Program Manager, then presented the Rules for Administration of Wastewater Treatment Facility Grants, Docket No. 58-0104-1501. He explained that this rulemaking was initiated to comply with 2014 amendments to the Clean Water Act that require planning documents used for State Revolving Fund (SRF) projects to assess the cost and effectiveness, to the maximum extent possible, of efficient water use, reuse, recapture and conservation, and energy conservation. Mr. Burnell and Mr. Wendland answered questions from the Board. There were no questions from the public.

- **MOTION:** Mr. Nick Purdy moved that the Idaho Board of Environmental Quality adopt as pending rules the Rules for Administration of Wastewater Treatment Facility Grants as presented in the final proposal under Docket No. 58-0104-1501 with the rules becoming final and effective upon the adjournment sine die of the second regular session of the sixty-third Idaho legislature if approved by the legislature.
- **SECOND:** Mr. Kermit Kiebert
- **VOICE VOTE:** Motion carried unanimously.

AGENDA ITEM NO. 8: RULES FOR ADMINISTRATION OF WATER POLLUTION CONTROL LOANS, DOCKET NO. 58-0112-1501 (PENDING RULE)
RULEMAKING INITIATED TO INCORPORATE THE ADDITIONAL CRITERIA FOR EVALUATING THE ELIGIBILITY FOR DISADVANTAGED LOANS THAT ARE NOT ALREADY IN THE EXISTING RULE.

Mr. Burnell and Mr. Wendland presented the Rules for Administration of Water Pollution Control Loans, Docket No. 58-0112-1501. Mr. Burnell stated that this rule revision is also to achieve compliance with revisions to the Clean Water Act passed in 2014. He explained that this rule concerns disadvantaged loans in DEQ's Wastewater Loan Program and requires the agency to use unemployment and population data to determine whether a community is disadvantaged and

therefore eligible for some form of principal forgiveness on their loan. Mr. Burnell and Mr. Wendland responded to questions from the Board.

- **MOTION:** Ms. Carol Mascareñas moved that the Idaho Board of Environmental Quality adopt as pending rules the Rules for Administration of Water Pollution Control Loans as presented in the final proposal under Docket No. 58-0112-1501 with the rules becoming final and effective upon the adjournment sine die of the second regular session of the sixty-third Idaho legislature if approved by the legislature.
- **SECOND:** Mr. Kevin Boling.
- **VOICE VOTE:** Motion carried unanimously.

AGENDA ITEM NO. 9: RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO, DOCKET NO. 58-0101-1501 (PENDING RULE)

UPDATE OF FEDERAL REGULATIONS INCORPORATED BY REFERENCE

Ms. Tiffany Floyd, Air Quality Division Administrator, introduced Mr. Carl Brown, Air Quality Rules Coordinator, and presented on the Rules for the Control of Air Pollution in Idaho under Docket No. 58-0101-1501. Ms. Floyd explained that in order for DEQ to maintain primacy it is important to incorporate by reference updated federal regulations annually. She noted that a summary of the rules DEQ is proposing to incorporate by reference is included in the Board packet. She explained that the summary highlights rules that impact Idaho and provides a description of each rule section with web links for the 38 total changes.

Ms. Floyd added that DEQ also included in this docket some minor rule revisions to delete obsolete sections and make one minor clarification to permitting language. She detailed the deletions in Section 008, which include the greenhouse gas definition of a major source vacated by a US Supreme Court decision and changes to the rules affecting transportation projects in areas that do not meet the national ambient air quality standards. Ms. Floyd stated that the last revision was a clarification in Section 200 relating to attainment and nonattainment permitting areas then stood for questions from the Board. There were no comments from the public.

- **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. 58-0101-1501 with the rules becoming final and effective upon the adjournment sine die of the second regular session of the sixty-third Idaho legislature if approved by the legislature.
- **SECOND:** Mr. Kermit Kiebert.
- **VOICE VOTE:** Motion carried unanimously.

AGENDA ITEM NO. 10: RULES AND STANDARDS FOR HAZARDOUS WASTE, DOCKET NO. 58-0105-1501 (PENDING RULE)

UPDATE OF FEDERAL REGULATIONS INCORPORATED BY REFERENCE

Mr. Orville Green, Waste Management and Remediation Division Administrator, introduced Mr. Matt Alvarado, Hazardous Waste Regulation and Policy Coordinator, then presented the Rules and Standards for Hazardous Waste under Docket No. 58-0105-1501. He explained that this is DEQ's annual incorporation by reference of hazardous waste regulations promulgated through June 30, 2015, for consistency with federal requirements. Mr. Green explained the rule changes which

incorporate revisions to the electronic manifest system and Cathode Ray Tube Rule, and respond to vacatur of the Comparable Fuels Rule and Gasification Rule. He explained that these changes enable Idaho to maintain primacy for the Hazardous Waste Program and stood for questions. There were no comments from the public.

- **MOTION:** Mr. Kevin Boling 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. 58-0105-1501 with the pending rules becoming final and effective upon the adjournment sine die of the second regular session of the sixty-third Idaho legislature if approved by the legislature.
- **SECOND:** Mr. Kermit Kiebert.
- **VOICE VOTE:** Motion carried unanimously.

AGENDA ITEM NO. 11: REPORT ON WATER QUALITY STANDARDS NEGOTIATED RULEMAKING HUMAN HEALTH CRITERIA FOR TOXICS/IDAHO FISH CONSUMPTION RATE

Mr. Burnell and Mr. Essig outlined updates to Idaho's Human Health Criteria for toxics negotiated rulemaking since last presenting at the May 2015 Board meeting. Mr. Burnell explained that staff were focused on data analysis April through July then conducted two negotiated rulemaking meetings in July and August and an October public hearing. He noted that the public comment period ran from October 7 through November 6 and that DEQ is now developing response to public comments and considering various rulemaking options. He also noted that DEQ will send the Board the full rule packet to prepare for the December 10 Board meeting and that staff are preparing a detailed technical support document to justify the proposed criteria under development. Mr. Burnell closed by explaining that if the Board approves the rule in December, it will then go before the 2016 legislature, and if approved, will be submitted to EPA in fall 2016 with the primacy application.

Chairman McCreedy opened the floor to questions from the Board which Mr. Burnell, Mr. Conde, and Mr. Essig responded to. Chairman McCreedy asked how the Board can best prepare for the December 10 Board meeting where they will vote on this rulemaking. Ms. Paula Wilson, Rules Coordinator, indicated that she will send a list of links from the DEQ website so Board members can view comments, discussion papers, and the negotiated rulemaking history in advance of the meeting.

AGENDA ITEM NO. 12: CONTESTED CASE AND RULE DOCKET STATUS REPORT

Ms. Wilson reviewed the rule docket status report (attached) noting that there are no contested cases at this time.

AGENDA ITEM NO. 13: PRESENTATION ON PROCESS FOR THE SELECTION OF HEARING OFFICERS

Mr. Conde reminded the Board of their request that DEQ come back and report on the current process for selecting and removing hearing officers from the Board-approved list as well as possible alternatives. Mr. Conde, along with Deputy Director Jess Byrne and Ms. Wilson, looked into the process and reported on DEQ's practice, contested rules language, and the proposed statute change included in the IPDES rulemaking. Mr. Conde mentioned that the Office of Performance Evaluations is also looking at this process statewide. Following several questions and discussion, Mr. Conde

offered to summarize the process in writing before the December 10 Board meeting where the Board will take any necessary action.

AGENDA ITEM NO. 14: SET 2016 BOARD MEETING SCHEDULE

The 2016 Board meetings were set for:

- May 11 & 12
- October 12 & 13
- November 17 & 18 (November 17 if only one day is needed.)

Ms. Wilson will email the dates to Board members. Chairman McCreedy asked the director to look into the possibility of holding a meeting outside of Boise with May being the best month. Mr. Kiebert suggested consideration of the Silver Valley.

AGENDA ITEM NO. 15: ELECTION OF OFFICERS

Chairman McCreedy asked whether the Board was electing new officers or going with tradition and ratifying current officers to serve for another year. There was a short discussion.

- **MOTION:** Mr. Nick Purdy moved that the Idaho Board of Environmental Quality retain the present 2015 Board officials for the 2016 calendar year. Board officials are: John McCreedy, Chairman; Kevin Boling, Vice-Chair; and Beth Elroy, Secretary.
- **SECOND:** Ms. Carol Mascareñas.
- **VOICE VOTE:** Motion carried unanimously.

AGENDA ITEM NO. 16: LOCAL REPORTS AND ITEMS BOARD MEMBERS MAY WISH TO PRESENT

Ms. Elroy mentioned that today was Chairman McCreedy's birthday and everyone wished him the best.

Mr. Kiebert asked whether DEQ is involved with the Alta Mesa production site in Payette County where they are drilling for natural gas and oil. Ms. Floyd reported that Alta Mesa is in the process of getting their gas wells permitted and that DEQ's engineering staff is working closely with them.

Mr. Kiebert also asked whether Magnida had broken ground in American Falls yet or if they are still working out financing. Ms. Floyd replied that her understanding is they have not broken ground yet due to issues with financing but that Magnida has not contacted DEQ with any changes.

THE MEETING ADJOURNED AT 3:48 P.M.



John McCreedy, Chairman

Beth Elroy

Beth Elroy, Secretary

Rosie Alonzo

Rosie Alonzo, Assistant to the Board and Recorder