

**BEFORE THE BOARD OF ENVIRONMENTAL QUALITY
STATE OF IDAHO**

EMILY RENE SMITH and KIDS VS GLOBAL WARMING, Petitioners) Docket No. 0101-11-03)) ORDER DENYING PETITION FOR) INITIATION OF RULEMAKING)
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On May 4, 2011, Emily Smith & Kids vs Global Warming filed a Petition for Initiation of Rulemaking pursuant to Idaho Code § 67-5230 and IDAPA 58.01.23.800. The Petition seeks the adoption of a rule to strictly limit and regulate fossil fuel carbon dioxide emissions, and to establish an effective emissions reduction strategy that will achieve an atmospheric concentration no greater than 350 ppm of carbon dioxide by 2100. The Petition requests that the Board adopt a rule that (1) ensures that carbon dioxide emissions from fossil fuels peak in the year 2012, (2) includes a carbon dioxide emissions reduction plan that reduces state-wide fossil fuel carbon dioxide emissions by at least 6% annually, until at least 2050, and expands Idaho's capacity for carbon sequestration; and (3) establishes a state-wide greenhouse gas emissions accounting, verification and inventory and requires issuance of annual progress reports so that the public has access to accurate data regarding the effectiveness of Idaho's efforts to reduce fossil fuel carbon dioxide emissions.

The Board has reviewed the Petition and handouts provided by DEQ at today's Board meeting. The handouts provided by DEQ provide Idaho greenhouse gas emission background information, relevant state level greenhouse gas activities in Idaho and a brief summary of EPA's mandatory Greenhouse Gas Reporting Rule. The Board also heard testimony from the

Petitioner, the Idaho Department of Environmental Quality; Pat Barclay, ICIE; and Sam Routson, Idahoan Foods.

Based upon the above described testimony and information, the Board by unanimous vote passed a motion to deny the Petition. The Board's denial is based upon the following reasons.

1. The cost of going forward with the requested rulemaking outweighs the small benefits that potentially could be achieved by the rulemaking. DEQ is currently regulating greenhouse gasses as required under the Clean Air Act. At this time, due to the small ambient contribution of greenhouse gasses from fossil fuel sources in Idaho, and the added expense of regulating sources other than that required by federal law, the Board does not believe it is a wise use of resources to commence a rulemaking to accomplish that required in the Petition.
2. Implementation of the rulemaking requested in the Petition is impracticable and it may be impossible to achieve the requirements proposed in the Petition. The Board is uncertain whether it could reduce carbon dioxide emissions from fossil fuel sources in Idaho by 6% annually and such reductions in Idaho could in no way guarantee an ambient concentration level of 350 ppm of carbon dioxide by the year 2100.
3. Petitioners contend that the Public Trust Doctrine in Idaho extends to the atmosphere and thus the state of Idaho is obligated to act on the Petition to reduce carbon dioxide emissions from fossil fuel sources. However, “[t]he public trust doctrine as it is applied in the state of Idaho is solely a limitation on the power of the state to alienate or encumber the title to the beds of navigable waters as defined in this chapter.” Idaho Code Section 58-1203(1). Therefore, the Public Trust Doctrine does not mandate the Board to proceed with the rulemaking.

This denial of the petition is a final agency action. Pursuant to Idaho Code §§ 67-5230 and 67-5270 and IDAPA 58.01.23.801.02, any person aggrieved by this Order may seek review of the Order by filing a petition for judicial review in District Court of the county in which the hearing was held; the final agency action was taken; the party seeking review resides or operates its principle place of business in Idaho; or the real or personal property that was the subject of the denial of the petition is located, within twenty-eight (28) days of the service date of this Order.

DATED THIS 29th day of June, 2011.

IDAHO BOARD OF ENVIRONMENTAL QUALITY



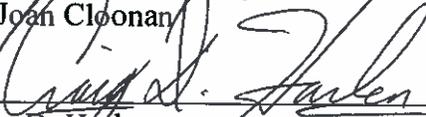
Nick Purdy



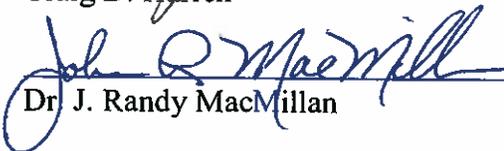
Carol Mascareñas



Dr. Joan Cloonan



Craig D. Harlen



Dr. J. Randy MacMillan

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)
) CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of June, 2011, a true and correct copy of the **Order Denying Petition for Initiation of Rulemaking** was served on the following:

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