



State of Idaho
DEPARTMENT OF ENVIRONMENTAL QUALITY
BOARD OF ENVIRONMENTAL QUALITY

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Toni Hardesty, Director

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IDAHO BOARD OF ENVIRONMENTAL QUALITY

MINUTES

April 21, 2010

The Board of Environmental Quality convened on April 21, 2010, at 9 a.m. at:

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

ROLL CALL

BOARD MEMBERS PRESENT

Craig Harlen, Chairman
Nick Purdy, Vice-Chairman
Kermit Kiebert, Secretary
Donald J. Chisholm, Member
Dr. Joan Cloonan, Member
Dr. John R. "Randy" MacMillan, Member
Carol Mascareñas, Member

BOARD MEMBERS ABSENT

None

DEPARTMENT OF ENVIRONMENTAL QUALITY STAFF PRESENT

Toni Hardesty, Director
Barry Burnell, Administrator, Water Quality Division
Douglas Conde, Senior Deputy Attorney General, DEQ
Holly Goodman, Assistant to the Board
Orville Green, Administrator, Waste & Remediation Division
Susan Hamlin, Deputy Attorney General, DEQ
Tim Wendland, Loan Program Manager
Paula Wilson, Rules Coordinator

OTHERS PRESENT:

Justin Hayes, Idaho Conservation League
Alex LaBeau, Idaho Association of Commerce & Industry (IACI)
Jack Lyman, Idaho Mining Association
Keith Reynolds, Division of Financial Management
Jayson Ronk, IACI

- ❖ All attachments referenced in these minutes are permanent attachments to the minutes on file at the Idaho Department of Environmental Quality. To obtain a copy, contact the Board Assistant at (208) 373-0241.

PUBLIC COMMENT PERIOD

Chairman Craig Harlen called the meeting to order and opened the floor to public comments on topics not specifically included on the agenda.

Justin Hayes, Program Director of Idaho Conservation League, reported that EPA released a proposed rule for mercury emissions which specifically apply to northern Nevada gold facilities as well as any facility within the United States. This proposed rule is based on stack limits with new facilities having more stringent limits. He noted that this administration appears to be targeting mercury for additional scrutiny, although mercury from sources other than gold and cement may be subject to future regulation. He observed that DEQ is currently working toward a negotiated rulemaking for a plan to develop controls and regulations for mercury sources in Idaho and that this work needs to go forward regardless of the EPA rule.

In response to a question from Mr. Chisholm, Mr. Hayes noted that the Durkee cement plant in Oregon had sought special treatment because it is a uniquely large emitter due to the content of mercury in its feedstock. Mr. Hayes anticipated that a rule will be forthcoming in the next six to eight months and expects that this facility will need to install fairly stringent controls.

AGENDA ITEM NO. 1: DIRECTOR'S REPORT

Toni Hardesty, Director, presented a brief report on the completed legislative session. She reviewed a presentation she had given to the Joint Finance Appropriation Committee (attached), noting that DEQ's general fund budget for Fiscal Year 2011 will be the smallest general fund budget since Fiscal Year 2001. She noted that DEQ received significant stimulus funding which was earmarked for specific projects and would not be used to grow the agency or to fund positions. In addition, she noted that DEQ is currently holding approximately 40 positions vacant—17 due to layoffs and 23 due to attrition. She added that feedback from the public appears to place water quality monitoring as the biggest concern in light of reduced budgets. She noted that it would cost about \$300,000 for personnel to reinstate the water sampling program.

Ms. Hardesty noted that DEQ worked with the health districts to develop a plan outlining commitment and cooperation in areas such as health district employee training and development of consistent procedures for all seven health districts. This plan was not formally presented to the legislature but was submitted to the Environmental Common Sense Committee and to the Environment, Energy and Technology Committee. In addition, legislation was passed to have health district rules related to environmental matters come before the Board of Environmental Quality (Board) for review. In addition, health district rules that were above and beyond state rules were repealed and she noted that this solely impacted Panhandle Health District. Also passed was Senate Bill 1400 which makes it clear that there will be an opportunity to replace sitting public health district board members after new county commissioner elections are held.

Ms. Hardesty also gave a brief report on Canyon County and legal requirements for air emissions testing, noting that emissions testing will begin there on June 1, 2010. She also noted that Senate Bill 1411a, which would have transferred the authority to regulate large poultry and swine operations from DEQ to the Department of Agriculture, was passed by the Senate but not by the House. Finally, she mentioned that Dennis McClerran is the new administrator for EPA, Region 10.

AGENDA ITEM NO. 2: ADOPTION OF MEETING MINUTES

a. November 12, 2009

➤ **MOTION:** Dr. Cloonan moved the Board adopt the minutes for the November 12, 2009, meeting as presented.

SECOND: Don Chisholm

VOICE VOTE: Motion carried by unanimous voice vote.

AGENDA ITEM NO. 3: FY2011 STATE WASTEWATER LOAN PRIORITY LIST

Barry Burnell, Administrator, Water Quality Division, reviewed the processing for developing the list, collecting public comment and selecting applicants. He noted that this year there is a 20% green infrastructure requirement for capitalization grants. Tim Wendland gave an overview of the public comments which were received for this list. Mr. Burnell commented on wastewater reuse programs and land application. Mr. Wendland clarified language in the comments to add that land application is considered environmentally innovative and can be counted as green infrastructure as long as there are feasible alternatives. Both Mr. Burnell and Mr. Wendland discussed the City of Greenleaf which is now ranked and proceeding, and has decided that an oxidation ditch will be its final treatment alternative.

➤ **MOTION:** Dr. MacMillan moved the Board adopt the FY2011 State Wastewater Loan Priority List.

SECOND: Dr. Cloonan

VOICE VOTE: Motion carried unanimously.

AGENDA ITEM NO. 4: FY2011 STATE WASTEWATER PLANNING GRANT PRIORITY LIST

Barry Burnell presented the list, noting that this program provides a dollar-for-dollar match to communities undertaking wastewater planning efforts. He noted that the legislature had granted a change in the wastewater loan program to charge a fee which will be offset to the community by a percentage shift in the interest rate. He added that this program provides for a public hearing but no requests were received. Four public comments were submitted. He noted that 45 projects were submitted through letters of interest and those highest on the priority list will receive funding sequentially until monies are exhausted.

In addition, he noted that DEQ's regional office engineering staff are charged with the responsibility to review and comment on the facility plans that are prepared and to determine whether or not an invoice for a particular reimbursement should be processed.

- **MOTION:** Dr. Cloonan moved the Board adopt the FY2011 State Wastewater Planning Grant Priority List.
SECOND: Carol Mascareñas
VOICE VOTE: Motion carried unanimously.

AGENDA ITEM NO. 5: FY2011 STATE DRINKING WATER LOAN PRIORITY LIST

Barry Burnell presented the list, noting that this program is funded by capitalization grants from EPA, matching funds from the Water Pollution Control Account, as well as loan repayments and interest earnings. He reviewed the process for soliciting projects and developing the list. No public hearing was requested by the public, although four comments from three different entities were received. He added that DEQ is working with the North Kootenai Water District on the possibility of forming a Local Improvement District which would serve as a legal entity that could receive a loan for the 4-S Ranch, a small northern Idaho community with a capacity problem. In addition, he noted that the City of Dayton has been added to the list. He mentioned that they will have to go fairly deep into the list to get to the green infrastructure costs.

- **MOTION:** Dr. MacMillan moved the Board adopt the FY2011 State Drinking Water Loan Priority List.
SECOND: Don Chisholm
VOICE VOTE: Motion carried unanimously.

AGENDA ITEM NO. 6: FY2011 STATE DRINKING WATER PLANNING GRANT PRIORITY LIST

Barry Burnell presented the list for approval and noted that the source of funds for this fiscal year will be drinking water set-asides, as opposed to state general funds which were used in prior years. No requests for a public hearing were received. One public comment from the City of St. Charles was submitted and the list was corrected to include the City of St. Charles on the priority list. Mr. Burnell observed that the projects on this list are also ranked and rated by DEQ engineers. Of the 39 cities or districts on the priority list, the first \$250,000 of requests will be funded. Tim Wendland noted that those monies will fund approximately the first 13 entities on the list.

Barry Burnell discussed drinking water rules for fire flow and irrigation, stating that the rules do allow for cities and districts to have fire flow as part of their system. City water supplies are often used for irrigation; however if pressurized irrigation is a separate system, it could not be funded with a drinking water planning grant. He also noted that the legislature passed a bill during the recent session that exempted five acres or more from having to comply with the access and fire water supply portions of the International Code. It was permissive in that it allowed counties to expand that exemption as well.

- **MOTION:** Dr. Cloonan moved the Board adopt the FY2011 State Drinking Water Planning Grant Priority List.
SECOND: Dr. MacMillan
VOICE VOTE: Motion carried unanimously.

AGENDA ITEM NO. 7: RULES FOR ADMINISTRATION OF DRINKING WATER LOAN PROGRAM, DOCKET NO. 58-0120-0901 (PENDING RULE) (Rulemaking to allow DEQ to collect a fee in the form of a percentage of each Drinking Water State Revolving Fund loan. Adoption of this rule would reclassify a portion of the interest due on loans to a loan fee with no monetary effect on loan recipients.)

Barry Burnell introduced this rule, noting that in Fall 2009 a temporary rule was brought before the Board implementing changes to the Drinking Water Loan program with respect to fees. Tim Wendland continued with an explanation of this rule and stated that this was an effort to lessen reliance on the state's general fund. He stated that there is a broad allowance through the Clean Water Act and the Drinking Water Act for DEQ to use fees collected on loans. Approval from EPA is required for this and is forthcoming. Fees will be used to facilitate planning efforts throughout the state and also to support the administration of the planning effort. Capacity development grant monies from EPA will be available in the interim until enough fee revenues have been collected for use. Mr. Wendland added that there are no stringency impacts—to the extent that fees are imposed the interest rate on the loan (a fixed, simple rate) is reduced.

Mr. Burnell added that every year DEQ develops a policy memorandum on the loan interest rates and noted that this year the rate cap is 1.75%. Lower rates are available for drinking water systems that are in compliance with the Safe Drinking Water Act.

- **MOTION:** Nick Purdy moved the Board adopt the Rules for Administration of Drinking Water Loan Program as presented in the final proposal under Docket No. 58-0120-0901.
- SECOND:** Dr. Cloonan
- VOICE VOTE:** Motion carried unanimously.

AGENDA ITEM NO. 8: RULES OF ADMINISTRATIVE PROCEDURE BEFORE THE BOARD OF ENVIRONMENTAL QUALITY, DOCKET NO. 58-0123-0901 (PENDING RULE) (Revisions for clarification purposes and for consistency with the Idaho Administrative Procedure Act and the Environmental Protection and Health Act.)

Doug Conde presented an overview of the rule noting that amendments were made in order to make it consistent with the Administrative Procedures Act (APA). These amendments included changing the date within which someone can appeal a Board decision. The rule now states that the time to appeal runs from the time the order is served. He noted that several changes were made to the rule to make the contested case process more efficient. A provision was added that requires intervenors to file a response to the original petition in order to be allowed to intervene. In addition, Mr. Conde noted that another change was made to the rule to reflect past practice—if all parties agree then the hearing officer can allow a longer period of time within which to file the petition.

- **MOTION:** Nick Purdy moved the Board adopt the Rules of Administrative Procedure as presented in the final proposal under Docket No. 58-0123-0901.
- SECOND:** Dr. Cloonan
- VOICE VOTE:** Motion carried unanimously.

AGENDA ITEM NO. 9: CONSIDERATION OF HEARING OFFICER APPLICATION FOR BOARD APPROVAL – SCOT L. CAMPBELL, BOISE

Paula Wilson presented an application from Scot L. Campbell, Attorney at Law, to be added to the list of Board-approved hearing officers. She briefly reviewed the selection process used for appointing hearing officers to contested cases. The selection is based on the location of the case and the attorney's expertise in the matter, as well as rotation through the list of hearing officers.

- **MOTION:** Dr. MacMillan moved the Board approve the addition of Scot L. Campbell to the hearing officer list.
- SECOND:** Don Chisholm
- VOICE VOTE:** Motion carried by unanimous voice vote.

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

Paula Wilson, Rules Coordinator, reviewed the current contested case and rule docket status report. Doug Conde followed up and it was noted that the City of Pocatello remains on the list, the southeast Idaho case is closed, Meridian Heights came to an agreement and the petition was withdrawn, and Idaho Conservation League is well into rulemaking. Sunnyside has not asked for reconsideration of their original application, nor have they submitted a new application.

Mr. Conde discussed a Notice of Intent to Sue filed by Idaho Conservation League over EPA's failure to take action with respect to the state's anti-degradation implementation procedures. While the state has an anti-degradation policy, the rules do not have a plan to implement it. The state plans to pursue negotiated rulemaking on this issue while ICL goes forward with the lawsuit against EPA. He noted that they have looked at anti-degradation implementation procedures from surrounding states, specifically those from Washington which have been approved by EPA. Barry Burnell noted that meetings regarding this issue will begin April 22, 2010, with two other meetings planned for the end of May and early June, 2010.

Barry Burnell said that Idaho Conservation League has another lawsuit with EPA on the backlog of NPDES permits. Details on settlement of this issue have not yet been released.

Nick Purdy stated that he had toured wastewater treatment facilities for both the City of Hailey and the City of Ketchum. Barry Burnell stated that DEQ has a contract or grant with EPA for wastewater treatment plant inspections and that this year the focus is on small facilities. Mr. Burnell did not believe that either the cities of Hailey or Ketchum were on that list.

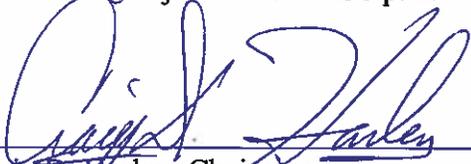
AGENDA ITEM NO. 11: LOCAL REPORTS AND ITEMS BOARD MEMBERS MAY WISH TO PRESENT

Don Chisholm noted that his term expires in July of 2010 and that he would not seek reappointment. Chairman Harlen noted that this would be a huge loss for the citizens of the state.

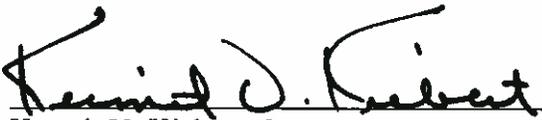
Toni Hardesty asked Doug Conde to touch on the budget challenges facing the Attorney General's office. Mr. Conde noted that furlough days and a vacant position have reduced available work hours at the same time the caseload has increased.

Paula Wilson asked Martin Bauer to comment on another air quality rule that was not listed. Mr. Bauer stated that they are going to instigate a negotiated rulemaking for the crop residue burning program to cover burns that are currently handled by the program but do not fit well within it. Examples of such burns would include mint blanching, broken bales that need to be burned, and burning of weed patches and pastures. He expects that this will be a fast track item and hopes that it will go before the legislature during the upcoming session.

The meeting adjourned at 11:36 p.m.



Craig D. Harlen, Chairman



Kermit V. Kiebert, Secretary