



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

October 12, 2011

The Board of Environmental Quality convened on October 12, 2011, at 8:30 a.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
Dr. John R. "Randy" MacMillan, Member

LEGAL COUNSEL

Douglas M. Conde
Harriet A. Hensley

BOARD MEMBERS ABSENT

Kevin Boling, Member

**BOARD
ASSISTANT**

Rosie Alonzo
(208) 373-0240

DEPARTMENT OF ENVIRONMENTAL QUALITY STAFF PRESENT

Toni Hardesty, Director
Douglas Conde, Senior Deputy Attorney General, DEQ
Paula Wilson, Rules Coordinator
Rosie Alonzo, Management Assistant, Assistant to the Board
Barry Burnell, Administrator, Water Quality Division
Martin Bauer, Administrator, Air Quality Division
Lisa Carlson, Deputy Attorney General – DEQ
Susan Hamlin, Deputy Attorney General – DEQ
Jess Byrne, Intergovernmental Affairs Coordinator
Mary Anderson, Air Quality Analyst – Smoke Management

OTHERS PRESENT:

Jack Lyman, Idaho Mining Association (IMA)
Benjamin Kelly, Nez Perce Prairie Grass Growers Association

Dar Olberding, IGPA
Ken Miller, Snake River Alliance
Brenda Tominaga, IWPG
Sam Routson, Idahoan Foods
Brad Goodsell, Capital Law

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

CALL TO ORDER

Chairman Nick Purdy called the meeting to order at 8:30. He opened the floor for the public to address the Board on topics not specifically on the agenda. No items were presented.

AGENDA ITEM NO. 1: DIRECTOR'S REPORT

Director Toni Hardesty presented her report before the board:

Zero Based Budgeting - Governor Otter implemented a zero based budgeting process for all executive branch agencies. DEQ is scheduled for zero based budgeting in FY2014, but has already started the process. In summary DEQ will be identifying all statutory and regulatory obligations, identifying work that is being accomplished within the agency and determining how that work matches DEQ's obligations, and determining if resources associated with those actions are adequate and effective or resources need to be redirected. The Director will keep the Board abreast to the process as it moves forward.

Ozone Standard - Under the Clean Air Act, the Environmental Protection Agency (EPA) must revisit the national ambient air quality standards every 5 years. Because of the controversy that occurred in setting the 75ppb ozone standard under the previous administration, the current administration considered promulgating a new ozone standard before the 5 year review timeframe. Expectations were that the new ozone standard would be set somewhere between 60 and 70ppb. However, last month the President decided not to move forward with a new standard at this time, citing potential adverse impacts to jobs and the overall economy. The ozone standard is now scheduled to be evaluated in 2013. This is obviously very important from the Treasure Valley's standpoint given that the valley has historically been right at the existing standard of 75ppb. The Treasure Valley Air Quality Council has proactively taken steps that both the state and the local entities are implementing to achieve emissions reductions and keep the valley below the ozone standard. Many of these measures have been very effective in reducing ozone numbers and it is good news that they will have more time to work before the standard is revisited.

Beneficial Use Reconnaissance Program – For a couple of years due to funding decreases by the legislature, DEQ was unable to implement our seasonal BURP program. This past summer was the first full season for the program since 2008. This was accomplished with one-time funding that was approved by the legislature from our Water Pollution Control Account. As a result, DEQ monitored 238 streams and collected data for our 2014 integrated water quality report to the EPA. DEQ continues to work on

establishing long-term funding for the BURP program. This past field season, DEQ also conducted lake monitoring at 25 lakes and reservoirs statewide, which will likewise be included in the 2014 integrated report. For the first time, the agency conducted federally funded monitoring in support of the national wetlands condition assessment. Monitoring occurred in 27 wetlands statewide with assistance from Idaho Department of Fish and Game. The data from this monitoring effort was submitted to EPA to produce the first ever national wetland condition assessment report scheduled for 2014.

Coeur d'Alene Basin Superfund Site - On September 8, U. S. District Court Judge Lodge approved the Hecla settlement for the Coeur d'Alene Basin Superfund site. Hecla was the last major Potential Responsible Party (PRP) to settle, agreeing to pay \$263.4 million to the U.S., Coeur d'Alene Tribe and the State of Idaho to resolve all environment claims on the site. Out of the \$263.4 million, \$65.9 million will go to Natural Resource Trustees for natural resource restoration and \$197.5 million will go for the clean-up of the contamination. Coupled with last year's monumental settlement of ASARCO, there is \$140 million available for natural resource restoration and \$691.5 million for clean-up of that area. Director Hardesty stood for questions from Board members.

Mr. Kiebert asked Director Hardesty if work at the site was ready to be implemented. Director Hardesty responded EPA is currently working on a Record of Decision (ROD) Amendment that will guide the use of the funds. EPA issued a draft which was met with great concern by the state, local governments, and the citizens of the area. The community felt the scope was too big and the timeframe was too long. EPA is reviewing all the comments and is scheduled to release a revised version of the ROD amendment either late winter or early spring.

Chairman Purdy questioned the oversight of the PRP dollars. Director Hardesty explained the state of Idaho we will directly receive \$17 million for the institutional controls program that DEQ implements through the health district. These funds will go into the Governor's Trust Fund and will be managed by the state. The major portion of the settlement money from the ASARCO settlement goes to EPA and they have set up a trust fund. Mr. Dan Silver is the trustee. His job is to invest the money, manage it and direct work for the federal government. Idaho will continue to be involved with the remediation work, which is still being sorted out. Regarding the natural resource money, the natural resource trustees which are the federal agencies, the state agencies, and the Coeur d'Alene Tribe will make decisions on how that money is spent for the restoration activities. The state entities are primarily DEQ and the Department of Fish and Game.

There were no further questions from the Board.

ROLL CALL

Ms. Rosie Alonzo took roll call. All board members were present, with the exception of the newest member. Chairman Purdy announced the newest member as being Mr. Kevin Boling who was appointed this week and will be at the November Board meeting.

AGENDA ITEM NO. 2: ADOPTION OF MEETING MINUTES

Consideration of the adoption of the minutes of the June 29, 2011 meeting was rescheduled for

the next Board meeting on November 9, 2011.

AGENDA ITEM NO. 3: RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO, DOCKET NO. 58-0101-1001 (PENDING RULE)
(RULEMAKING INITIATED TO ADDRESS SMALL SCALE CROP RESIDUE BURNS)

Mr. Martin Bauer, Air Quality Division Administrator, explained this rule was adopted by the Board on April 25, 2011 as a Temporary Rule. This rule is now before the Board again as a Pending Rule and if adopted by the Board will go to the next legislative session and if approved will be effective sine die.

Mr. Bauer pointed out that last year DEQ was approached by the mint industry to enter into rulemaking to address mint blanching or as referenced in the rule "propane flaming". This is the process of applying heat to the top soils of cultivated fields of pre-emerged or plowed-under crop residue with less than 550 pounds per acre of burnable residue. This process is used to control disease, insects, pests, and weed emergence. DEQ took the rulemaking opportunity to also address some small crop residue burns not adequately addressed by the original rulemaking. These include small spot burns, such as weeds or pivot corners, and broken hay bales. These are burns of very low fuel loads that analysis has shown can be ignited with very little oversight or regulation. All these burns will be deemed to have a permit by rule to burn as long as burners comply with the conditions outlined in the rule. The propane flaming does not require a fee, but farmers applying for either a spot burn or a hay bale burn permit must pay a fee of \$20 which allows burning of up to ten acres of spots or hay bales per year, but not more than one acre of spots or bales per day. Spot & bale permits are valid for a calendar year and burning is only allowed on designated burn days, so burners will be required to check with DEQ to determine what days are burn days. DEQ will be forecasting burn days for the weekends for these types of burns.

This was a negotiated rule making and two meetings were held that included burners, members of SAFE, ICL the Nez Pierce Tribe, Idaho Farm Bureau, EPA and DEQ. Additionally, DEQ presented legislation this past session that exempted the propane flammers or blanchers from the fee requirements. This was passed by the legislature and signed by the Governor into law and is currently in effect.

There will be no additional cost for the regulated community and costs will actually decrease for the mint growers and other farmers wishing to blanch their crops. There are no controversial issues with this rule. The rule was patterned after rules that currently exist in the Washington Ag Burn Program and there are no stringency issues with this rule. Mr. Bauer stood for questions from the Board.

Dr. MacMillan asked about the definition of an institution with a sensitive population. Mr. Bauer responded that the definition is in the rules. It is basically an institution where persons cannot vacate and are sensitive to smoke or particulates, such as schools or hospitals. There is also a section in the rule that allows an institution to lobby or to request to be considered as a sensitive population.

Dr. Cloonan asked since this has been a temporary rule what the status of the SIP revision is and are there any projections on when it will be approved. Mr. Bauer responded that it has been

submitted and it is under review. DEQ is planning on being able to implement this in the spring of 2013.

Chairman Purdy inquired if growers need training prior to getting a permit on a spot burn or a bale burn and would the training delay a burn for a year. Mr. Bauer responded the rule lists the training. Growers are required to have training for the spot or bale burns, but it can be taken on-line, so there are no delays.

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

- **MOTION:** Dr. Cloonan 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. 58-0101-1001, with the pending rule becoming final and effective on the adjournment sine die of the Second Regular Session of the 61st Idaho Legislature if approved by the Legislature and with the special note which is under Section 624 that states that, prior to SIP approval by EPA, Sections 618 – 623 shall apply.
- **SECOND:** Dr. Randy MacMillan
- VOICE VOTE:** Motion carried unanimously.

AGENDA ITEM NO. 4: RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO, DOCKET NO. 58-0101-1102 (PENDING RULE)
(REPEALING OF ELECTRIC GENERATING UNIT CONSTRUCTION PROHIBITION)

Mr. Martin Bauer, Air Quality Division Administrator, continued with the next presentation. The Board adopted Rules for the Control of Air Pollution in Idaho as a temporary rule on April 25, 2011. This rule is now before the board as a pending rule and upon approval will be heard by this year's Legislature for final adoption.

As background, in 2006, EPA adopted a rule called the CAMR rule (Clean Air Mercury Rule). This rule was specific to coal fired power generation plants. CAMR required all states to develop rules to regulate mercury based upon emission budgets that were established for existing coal fired power generation capabilities in each state. Idaho's emission budget was set at zero pounds per year of mercury because no coal fired power generation plants existed in the state. Idaho had two options at that point. Option one was to opt into a cap and trade program that would allow coal fired power generating units that wanted to construct in Idaho to purchase mercury emissions budgets from states that had excess emissions in their budgets. Option Two was to opt out of the cap and trade program and regulate the mercury emissions based on the state allocated budget. Then Governor Risch decided to opt out of the cap and trade program and DEQ was then required to enact laws that would enforce the zero pounds per year mercury budget. This was accomplished by passing a rule that prohibited mercury emissions from coal fired power generation in the state.

CAMR was eventually determined to be invalid by the courts and has since been withdrawn by EPA and is no longer on the books. DEQ, with guidance from the Board, made the decision at the time that the rule was declared invalid, not to repeal the prohibition on coal fired power

generation until Idaho had mercury rules in place to address mercury emissions from these sources. This decision was made due to an overwhelming outpouring from citizens during the discussion of the original CAMR Rule and the public's concern of Idaho's lack of mercury regulation at the time. During the Board meeting of October 2010, the Board adopted new mercury rules and addressed all the facilities emitting mercury over certain thresholds that are outlined in the rule including coal fired power generation. Therefore, based on past direction from the Board, with a state specific mercury rule in place, DEQ is proposing to repeal the prohibition of mercury emissions from coal fired power generation.

Due to the nature of this rule making it was not a negotiated rule. There are no stringency issues associated with this rule. Mr. Bauer stood for questions from Board members. There were none.

Chairman Purdy invited further comments from the public on this pending rule. There was none.

- **MOTION:** Dr. Randy MacMillan moved the Board adopt as pending rules the Rules for the Control of Air Pollution in Idaho as presented in the final proposal under Docket 58-0101-1102, with the pending rules becoming final and effective on the adjournment sine die of the Second Regular Session of the 61st Idaho Legislature, if approved by the Idaho Legislature.
- **SECOND:** Dr. Joan Cloonan
- VOICE VOTE:** Motion carried unanimously.

AGENDA ITEM NO. 5: RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO, DOCKET NO. 58-0101-1103 (PENDING RULE)
(UPDATE OF FEDERAL REGULATIONS INCORPORATED BY REFERENCE)

Mr. Martin Bauer, Air Quality Division Administrator, presented this rule which is a routine annual incorporation by reference of final federal rules promulgated as of July 1, 2011. This rule-making is necessary to ensure that the Idaho rules for control of air pollution remain consistent with federal regulations. This rule was not a negotiated rule, but did include a public comment and a public hearing. No comments were received during this rulemaking. There are no additional costs to the regulated community and this rule does not regulate an activity not regulated by the federal government nor is it broader in scope or more stringent than the federal regulations. Mr. Bauer stood for any questions from the Board.

Dr. Cloonan asked if this update includes any rules of particular significance that the Board should be aware of and would the regulated entities be required to comply even if we do not update or incorporate the federal rules into Idaho code. Mr. Bauer's response was these rules do include many updates to existing rules, such as National Ambient Air Quality Standards, and updates to meet new source performance standards or hazardous air pollutant standards. This update aligns and updates the annual reference so our rules are consistent with the federal annual references. These are federal rules and regulated entities are required to comply with these rules even if the state does not incorporate them into Idaho code.

Chairman Purdy asked if there was public comment. There was none.

- **MOTION:** Ms. Carol Mascareñas moved the Board adopt as pending rules the Rules for the Control of Air Pollution in Idaho as presented in the final proposal under Docket 58-0101-

1103, with the pending rules becoming final and effective upon the adjournment sine die of the Second Regular Session of the 61st Idaho Legislature, if approved by the Legislature.

➤ **SECOND:** Mr. Kermit Kiebert

VOICE VOTE: Motion carried unanimously.

AGENDA ITEM NO. 6: RULES FOR THE ADMINISTRATION OF WASTEWATER TREATMENT FACILITY GRANTS, DOCKET NO. 58-0104-1001 (PENDING RULE)

(RULEMAKING TO REVISE THE PRIORITY RATING CRITERIA TO CLOSELY MATCH THE CLEAN WATER STATE REVOLVING FUND LOAN CRITERIA, ADDRESS THE NEED TO REDUCE THE OBLIGATION TO CONDUCT AN ENVIRONMENTAL STUDY IN THOSE CASES IN WHICH A GRANT RECIPIENT WILL NOT IMMEDIATELY PURSUE FEDERAL AID FOR CONSTRUCTION, AND UPDATE THE COST ELIGIBILITY CRITERIA TO ACHIEVE CONSISTENCY.

Mr. Barry Burnell, Water Quality Division Administrator, presented the next set of rules. These rules are temporary and in effect, as passed by the Board in April of 2011. The purpose of this particular rulemaking was to match the rating criteria for the state wastewater planning grants to the Wastewater State Revolving Fund (SRF) loan criteria, to reduce the obligation to conduct an environmental study, and to update the cost eligibility criteria.

Mr. Burnell described the process of this particular rule to date. So far with the grants issued, the recipients have elected to conduct the environmental information documents (EID) as a portion of the grant. The EID is not needed if entities are seeking non-federal funding for their project, an example would be if a city or district is choosing to self-fund or have access to the bond bank. For those facilities that choose alternatives to federal funding, there will be cost savings as the facility does not have to do an EID.

There are no controversial issues associated with this rule and because there is no federal counterpart to this rule, there are no stringency issues. With that, Mr. Burnell stood for questions from the Board.

Chairman Purdy inquired as to the outcome of the City of Bliss. Mr. Burnell responded that the Bliss facility was funded to upgrade their lagoons and had multiple federal funding partners. An EID was completed by DEQ and because the project had other federal funding, they also prepared their own EID. There was an appeal of the project, but ultimately it was settled. The facility did use some American Recovery and Reinvestment Act (ARRA) funding. The construction on the project is complete and the project is operational.

Chairman Purdy asked if there was public comment. There were none.

➤ **MOTION:** Mr. John McCreedy moved the Board adopt as pending rules the Rules for Administration of Wastewater Treatment Facility Grants as presented in the final proposal under Docket 58-0104-1001, with the pending rules becoming final and effective upon the adjournment sine die of the Second Regular Session of the 61st Idaho Legislature, if approved by the Idaho Legislature.

- **SECOND:** Dr. Randy MacMillan
VOICE VOTE: Motion carried unanimously.

AGENDA ITEM No. 7: RULES FOR THE ADMINISTRATION OF PLANNING GRANTS FOR PUBLIC DRINKING WATER FACILITIES, DOCKET No. 58-0122-1001 (PENDING RULE)

(RULEMAKING TO REVISE THE PRIORITY RATING CRITERIA TO CLOSELY MATCH THE DRINKING WATER STATE REVOLVING FUND LOAN CRITERIA, ADDRESS THE NEED TO REDUCE THE OBLIGATION TO CONDUCT AN ENVIRONMENTAL STUDY IN THOSE CASES IN WHICH A GRANT RECIPIENT WILL NOT IMMEDIATELY PURSUE FEDERAL AID FOR CONSTRUCTION, AND UPDATE THE COST ELIGIBILITY CRITERIA TO ACHIEVE CONSISTENCY.)

Mr. Barry Burnell, Water Quality Division Administrator, explained that this rule was adopted as a temporary rule by the Board in April 2011 and is currently in effect. The purpose of this rule was to revise the rating criteria for drinking water planning grants so that it would match the Drinking Water State Revolving Fund loan criteria, to reduce the obligation to conduct an environmental study, and to update the cost eligibility criteria for consistency purposes.

Mr. Burnell went on to explain the process of this rule to date. This is the companion rule for the previous rule. This particular rule also would save the regulated community dollars if they did not use federal funding and opted out of completing an EID. There is no federal counterpart, so there are no stringency issues or contentious elements of this rule

Mr. Burnell pointed out one typographical error on page 133, under the General Conditions of Existing Facilities, where DEQ lists the number of points that were awarded for a particular activity. At the very end, it states sixty-one points and then in parentheses it says 60. It should be sixty and not sixty-one. It is the same for the drinking water loan.

Ms. Paula Wilson pointed out that when the Board adopted the temporary rule it was listed as sixty, both in alpha and numeric. She stated she will make a notation in the notice and ensure it is right in the code.

Mr. Burnell stood for questions from the Board.

Dr. MacMillan commented that as these projects are developed and successful; it would be good to have innovative ideas on sustainability be communicated to the public or other potential grant or loan applicants. Mr. Burnell reported that usually either he or Mr. Tim Wendland make presentations to mayors, city councilmen, and public works directors about DEQ's SRF program. In those presentations they address sustainability efforts. He will also work with Ms. Sharon Keene, of DEQ's Environmental Management and Information Division, to post information to DEQ's website on outreach for sustainability.

Chairman Purdy asked if there was public comment. There was none.

- **MOTION:** Dr. Joan Cloonan moved the Board adopt as pending rules the rules for Administration of Planning Grants for Public Drinking Water Facilities as presented in the

final proposal under Docket 58-0122-1001, with the pending rules becoming final and effective upon the adjournment sine die of the Second Regular Session of the 61st Idaho Legislature, if approved by the Idaho Legislature.

➤ **SECOND:** Mr. Kermit Kiebert.

VOICE VOTE: Motion carried unanimously.

AGENDA ITEM NO. 8: RULES FOR THE ADMINISTRATION OF WATER POLLUTION CONTROL LOANS, DOCKET NO. 58-0112-1001 (PENDING RULE)

(RULEMAKING TO MAKE THE NECESSARY REVISIONS FOR CONSISTENCY WITH RECENT CHANGES TO THE CLEAN WATER STATE REVOLVING FUND.)

Mr. Barry Burnell, Water Quality Division Administrator, continued with the Rules for Administration of Water Pollution Control Loans. These rules were adopted and revisions were necessary to be consistent with the changes made to the federal Clean Water State Revolving Loan Fund. DEQ modified the rules to incorporate the sustainability practices. The federal law also requires that a certain amount of each year's federal Clean Water Act grant be provided in the form of a subsidy.

This particular rulemaking also addresses the related grant portion of the loan program for cost eligibility issues. The rating criteria have been revised to incorporate points for sustainability. DEQ has a step-by-step process to determine an appropriate loan subsidy for a community. This involves the length of the loan and the interest rates, so that DEQ can manage the loan fund in a manner that provides subsidies to disadvantaged communities.

Mr. Burnell went on to explain the progression of this rule to date. DEQ did not receive any comments regarding this rule. DEQ does not anticipate any costs to the agency or to the regulated community. It incorporates changes made by the federal government, so it is not broader in scope than the federal regulations. With that, Mr. Burnell stood for questions from the Board.

Mr. John McCreedy, in reference to the principle forgiveness, inquired whose money is being forgiven and who benefits from it. Mr. Burnell explained that principle forgiveness is one of the terms of the federal capitalization grant that DEQ receives. The federal dollars are typically being used as a loan, but in some cases is being given as a grant to a disadvantaged community. There is a hierarchy DEQ uses to evaluate principle forgiveness for a disadvantaged community. DEQ's objective is to provide principle forgiveness to eligible communities by proportion and then up to an amount where the cost per household exceeds 1½ percent of the median household income. The federal capitalization grant has a set minimum amount of principle forgiveness that DEQ is obligated to provide each year to loan recipients.

Dr. McMillan asked what is the basis of the 1½ percent and is it a federal determination. Mr. Burnell said his recollection seems that it was a federal requirement, but he was not certain and would have to get back with an answer.

Chairman Purdy inquired if this rule mirrors a federal rule or if it is guidance. Mr. Burnell responded that the federal requirement is that you provide subsidy or principle forgiveness of a certain amount and it is to be used for those facilities that are disadvantaged.

Mr. Kermit Kiebert asked if the 1½ percent of median household income is the target or can it be less. Mr. Burnell responded, in order to qualify as a disadvantaged community, the user rate must be greater than 1½ percent of the median household income. Principle forgiveness is 30% of DEQ's capitalization grant. DEQ looks at those communities that are greater than 1½ percent and spreads out principle forgiveness proportionally to each of the communities. Toward the end of the fiscal year depending on how many of those selected communities have signed the loans, DEQ takes the unsigned amount and distributes this additional principle forgiveness amount among the eligible disadvantaged communities with signed loans for the current Intended Use Plan.

Mr. John McCreedy asked how the principle forgiveness breaks down between urban and rural communities and whether the economy has an impact on the applications. Mr. Burnell responded it is primarily the distressed rural communities that receive principle forgiveness.

Chairman Purdy asked if there was public comment. There was none.

➤ **MOTION:** Dr. Randy MacMillan moved the Board adopt as pending rules the Rules for Administration of Water Pollution Control Loans as presented in the final proposal under Docket No 58-0112-1001, with the pending rules becoming final and effective upon the adjournment sine die of the Second Regular Session of the 61st Idaho Legislature, if approved by the Idaho Legislature.

➤ **SECOND:** Dr. Joan Cloonan

VOICE VOTE: Motion carried unanimously.

AGENDA ITEM NO. 9: RULES FOR THE ADMINISTRATION OF DRINKING WATER LOAN PROGRAM, DOCKET NO. 58-0120-1001 (PENDING RULE)

(RULEMAKING TO MAKE THE NECESSARY REVISIONS FOR CONSISTENCY WITH RECENT CHANGES TO THE DRINKING WATER STATE REVOLVING FUND.)

Mr. Barry Burnell, Water Quality Division Administrator, updated the Board on the Rules for the Administration of the Drinking Water Loan Program. This rulemaking was undertaken to achieve consistency with recent changes to the federal statutes of the Drinking Water State Revolving Fund program. The federal statute now requires DEQ consider system sustainability practices as a measure of eligibility for municipalities and districts to receive loans. The federal statute also requires that a certain amount of DEQ's federal Safe Drinking Water Act capitalization grant be provided in the form of a subsidy. Another part of this rule is the alignment of this rule with DEQ's Drinking Water Planning Grant Program.

DEQ revised the priority rating criteria to incorporate points for sustainability. DEQ is using the same criteria to derive which disadvantaged communities are eligible for subsidies when their user rates are greater than 1½ percent of the median household income. DEQ made revisions to the rating system and the cost eligibility criteria so there is consistency between the rules.

Mr. Burnell explained that DEQ did not receive any comments on this rule. There is no cost to the agency or the regulated community with this rule. It does incorporate the federal changes, so it is not broader in scope or more stringent than the federal regulations. It has the same approach

that DEQ used for the wastewater loan rule for dealing with subsidies. DEQ revised some of the criteria as far as public health emergencies and public health hazards. Mr. Burnell stood to address questions from the Board.

Dr. Randy McMillan asked what are “federal cross-cutting authorities?” Mr. Burnell responded when projects blend from wastewater and drinking water, there are environmental review requirements that come into play. Federal cross-cutting authorities deal with the level of environmental review. If a project qualifies for categorical exclusion because of findings of no significant impact, then the level of environmental review is relaxed.

Chairman Purdy asked if there was public comment. There was none.

➤ **MOTION:** Mr. Kermit Kiebert moved the Board adopt as pending rules the Rules for Administration of Drinking Water Loan Program as presented in the final proposal under Docket 58-0120-1001, with the pending rules becoming final and effective upon the adjournment sine die of the Second Regular Session of the 61st Idaho Legislature, if approved by the Idaho Legislature.

➤ **SECOND:** Mr. John McCreedy

VOICE VOTE: Motion carried unanimously.

FOLLOW-UP QUESTION: Chairman Purdy asked how the national budget problems are going to affect these programs from a funding standpoint. Mr. Burnell responded that DEQ has heard that DEQ’s capitalization grant will revert back to 2008 levels. He indicated that it could be at a lower level depending on whether the program is targeted for budget reductions. In the past there has been a stronger level of support for the drinking water capitalization grant than for the wastewater capitalization grant.

AGENDA ITEM NO. 10: RULES REGULATING SWINE AND POULTRY FACILITIES, DOCKET NO. 58-0109-1101 (PENDING RULE)

(RULEMAKING INITIATED TO IMPLEMENT HOUSE BILL 206 (2011), WHEREIN THE IDAHO LEGISLATURE PLACED THE RESPONSIBILITY AND OVERSIGHT OF CURRENT AND FUTURE POULTRY OPERATIONS WITH THE IDAHO STATE DEPARTMENT OF AGRICULTURE.)

Mr. Burnell, Water Quality Division Administrator, resumed with the presentation of rules. This rulemaking was undertaken to implement House Bill 206 that the Legislature enacted this past session. The legislation transferred the responsibility and oversight of current and future poultry operations from DEQ to the Idaho State Department of Agriculture (ISDA). The proposed rule removes references to poultry facilities from DEQ’s rules regulating swine and poultry facilities.

There is no cost to the agency and cost to the regulating community is being shifted to the ISDA. There is a companion rulemaking that is going on at ISDA. As far as DEQ is concerned, there are no controversial issues or contentious elements associated with this rule.

Mr. Burnell stood for any questions from the Board.

Mr. McCreedy asked if there are concerns or issues, would DEQ be entitled to comment and more importantly work with ISDA on poultry facilities. Mr. Burnell mentioned that DEQ staff has attended the rulemakings at ISDA. DEQ does not have a direct part or role to play in the rulemaking, but has offered our assistance as necessary.

Chairman Purdy mentioned that he did not see anything in the proposed rule that required ISDA to consider comments from DEQ or established a formal relationship. Mr. Burnell said there is not a particular MOU or site agreement. If DEQ has concerns over the siting of a facility, DEQ would discuss it with our sister agency. The poultry facilities that come into the state are planning on using a dry litter collection method. This process makes handling of the materials more environmentally friendly than a liquid process. There are allowances for liquid processes to be used. ISDA would review liquid holding facilities and require the National Resource Conservation Service (NRCS) and the American Society of Agricultural and Biological Engineers standards in the design of those facilities.

Director Hardesty added aside from the poultry rules, there is a Confined Animal Feeding Operation (CAFO) siting process which DEQ, ISDA and IDWR all participate in. The CAFO siting process is primarily for large operations. Counties are actually interested in asking the agencies to do siting evaluations for smaller facilities and are working on an MOU and a funding process whereby they would provide funding for conducting these evaluations.

Chairman Purdy asked if there was public comment. There was none.

- **MOTION:** Ms. Carol Mascareñas moved the Board adopt as pending rules the Rules regulating Swine and Poultry Facilities as presented in the final proposal under Docket 58-0109-1101, with the pending rules becoming final and effective upon the adjournment sine die of the Second Regular Session of the 61st Idaho Legislature, if approved by the Idaho Legislature.
 - **SECOND:** Dr. Joan Cloonan
- VOICE VOTE:** Motion carried unanimously.

AGENDA ITEM NO. 11: CONSIDERATION OF HEARING OFFICER APPLICATION FOR BOARD APPROVAL
(BRAD D. GOODSSELL, BOISE, IDAHO)

Ms. Paula Wilson, Rules Coordinator, briefly explained that up to this point the Board would receive a resume, cover letter, and any paperwork submitted by hearing officer applicants. Some issues came up where it was determined that it would be best if the hearing officer applicants could appear in person. This also provides the Board the opportunity to ask questions of the applicant. Ms. Wilson introduced Mr. Brad D. Goodsell, of Boise, Idaho.

Chairman Purdy asked Mr. Goodsell to provide a quick review of his qualifications.

Mr. Goodsell said he submitted his resume (part of the Board packet). He has been doing contested cases since 1990, either as representing state agencies or as a hearing officer. His experience started with Health and Welfare working with Medicaid audit appeals for about seven and one half years. He moved on to represent PERSI as lead council for ten years. He left the

state for a couple of years. He returned to Idaho, doing hearing officer work for the Department of Insurance, Department of Law Enforcement, and the Fish and Game Department. He has a lot of experience doing contested cases and would like to be a hearing officer for DEQ.

Mr. McCreedy inquired as to the members of Capital Law Group. Mr. Goodsell replied that it is Tom Arkoosh, Allan Bosch, David Ballard, Randy Barnum, and Jay Kiiha.

Mr. McCreedy asked Mr. Goodsell to explain his background and experience with both federal and state environmental statutes and regulations. Mr. Goodsell said he has represented clients on some environmental regulatory issues, included RCRA and Solid Waste Management Act. He has worked on contested cases and represented agencies under complex regulatory structures like Medicaid. He has also performed hearing work for the Department of Insurance dealing with significant issues. He has had some exposure to DEQ statues and regulations.

Chairman Purdy asked if he had ever been in an adversarial position with DEQ. Mr. Goodsell responded that he has not.

There were no other questions. Chairman Purdy thanked Mr. Goodsell.

Chairman Purdy asked for a discussion on the matter.

Mr. McMillan inquired if the Board has any specific criteria that a hearing officer would need to satisfy. Ms. Wilson said she included a copy of the ad that she put in the Advocate periodically to solicit applicants. The qualifications DEQ has been following are: at least 5 years legal experience; civil or administrative trial experience; and experience in environmental laws is preferable. Board approved applicants will be used on an as needed basis at a rate of \$110 per hour. This is the criterion that has been used for placing hearing officers on the approved list. There are no legal requirements.

Chairman Purdy asked if the matter had to be discussed in an executive session. Mr. Doug Conde said an executive session may not be needed, but could be called if the Board wished.

- **MOTION:** Dr. Randy MacMillan moved the Idaho Board of Environmental Quality approve the addition of Mr. Brad D. Goodsell to the hearing office list.
 - **SECOND:** Dr. Joan Cloonan
- VOICE VOTE:** Motion carried unanimously.

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

Agenda Item No. 12 was skipped for the moment to await Ms. Wilson's return to the meeting.

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

Chairman Purdy opened the opportunity for items the Board member to present any issues.

Dr. MacMillan reported on some efforts by the Idaho Dairy Association, Clear Springs, DEQ, IDWR, Idaho Power, USDA-ARS, and others to look into the nitrate issue in part of the Eastern Snake River Plain Aquifer. With the last couple of ground water presentations that were made to the Board, there was no real agreement about how significant a problem it is, but there is an agreement and strong interest that parties need to find out where the nitrate/nitrogen concentration in ground water is coming from. This effort will start in November. The dairy industry is very supportive of this and is part of the effort to monitor ground water sites.

Ms. Mascareñas inquired on the additional wells and if there was a cooperative fund for that. Dr. MacMillan responded that probably the Idaho Dairy Association and Clear Springs would be funding some of the monitoring wells.

Mr. Kiebert commented that IDWR keeps a log of what wells are in an area and the starting point would be to monitor some of those wells. Dr. MacMillan mentioned the approximately 200 existing wells will be monitored. Idaho Power has really stepped up their interest in trying to map the contours of the aquifer and ultimately try to figure out what direction the aquifer is going because it affects their water flow for hydropower. This is a big concern for Clear Springs, as well. Idaho Power and IDWR are taking the lead in identifying these wells, and are getting the human resources to measure the ground water depths. The Dairy Association is also helping that effort.

Chairman Purdy commented on a recent headline in the paper in reference to DEQ increases allowable pollution in the Big Wood River. He asked if DEQ received any feedback on that. Mr. Burnell reported that DEQ shifted from total coliforms to E coli as the standard for the TMDL on the Big Wood River. An addendum to the TMDL set the waste load allocations for E coli and will be reflected in the new NPDES for three facilities in Wood River. The addendum has been submitted and approved by EPA.

Mr. Kiebert referred to Director Hardesty and paid a compliment to Mr. Dan Redline, Regional Administrator for the Coeur d'Alene Regional office, and his staff. They are doing a real great job on things Mr. Kiebert refers to them. Director Hardesty thanked him.

There was a discussion by Board members on how to handle hearing officer appointments. Several suggestions were discussed and there was agreement from Board members that going into executive session to discuss candidates would be appropriate.

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

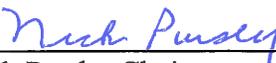
Ms. Paula Wilson, Rules Coordinator, reviewed the current contested case and rule docket status report. A reference copy of the promulgation Status Report is attached to the minutes on file.

AGENDA ITEM NO. 14: ELECTIONS OF BOARD OFFICIALS

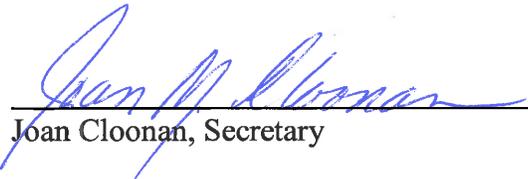
After a discussion, it was suggested to continue with the existing Board Officials if all were willing to serve.

- **MOTION:** Mr. John McCreedy moved the Board re-elect the current Board officers: Mr. Nick Purdy, Chairman; Ms. Carol Mascareñas, Vice-Chairman; and, Dr. Joan Cloonan, Secretary, by unanimous consent.
 - **SECOND:** Dr. Randy MacMillan
- VOICE VOTE:** Motion carried by unanimous vote.

THE MEETING ADJOURNED AT 10:50 A.M.



Nick Purdy, Chairman



Joan Cloonan, Secretary



Rosie Alonzo, Assistant to the Board and Recorder