



State of Idaho  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
BOARD OF ENVIRONMENTAL QUALITY

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Dirk Kempthorne, Governor  
Toni Hardesty, Director

## IDAHO BOARD OF ENVIRONMENTAL QUALITY

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## MINUTES

June 24, 2004

The Board of Environmental Quality convened on June 24, 2004 at 9 a.m. at:

**The Ashley Inn  
Tamarack Room  
500 N. Main Street  
Cascade, Idaho**

### ROLL CALL

#### BOARD MEMBERS PRESENT:

Paul C. Agdius, Chairman  
Dr. Joan Cloonan, Secretary  
Donald J. Chisholm, Member  
Craig Harlen, Member  
Nick Purdy, Member

#### BOARD MEMBERS ABSENT:

Dr. J. Randy MacMillan, Vice-chairman  
Marguerite McLaughlin, Member

#### DEPARTMENT OF ENVIRONMENTAL QUALITY STAFF PRESENT:

C. Stephen Allred, Director  
Chas Ariss, Engineering Manager, Boise Region Office (BRO)  
Jess Byrne, Interagency Affairs  
Debra Cline, Management Assistant to the Board  
Doug Conde, Deputy Attorney General, DEQ  
Tiffany Floyd, Senior Management Analyst, BRO  
Bill Jerrel, Water Quality Loan Program Manager  
Joe King, Senior Management Analyst, BRO  
Mike McGown, Administrator, BRO  
June Ramsdell, Airshed Manager, BRO  
Jon Sandoval, Chief of Staff  
Alan Stanford, Senior Water Quality Analyst  
Craig Shephard, Watershed Manager, BRO  
Faye Weber, Administrative Assistant II, BRO

**OTHERS PRESENT:**

Jim Moyer, Chairman, Southwest Idaho Basin Advisory Group

- ❖ 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) 373-0465.

**AGENDA ITEM NO. 1:           ADOPTION OF MAY 20, 2004 MINUTES**

- **MOTION:** Dr. Joan Cloonan moved the Board adopt the May 20, 2004 minutes as prepared.  
**SECOND:** Don Chisholm  
**VOICE VOTE:** Motion carried. 5 ayes; 0 nay; 2 absent (MacMillan, McLaughlin).

**AGENDA ITEM NO. 2:           DIRECTOR'S REPORT**

Director Steve Allred updated the Board on a number of issues:

- three grants were awarded to Idaho to assist in the cleanup of lands contaminated primarily with petroleum or solvents;
- the progress of cleanup efforts in the Bunker Hill area;
- INEEL cleanup negotiations; and
- the Coeur d'Alene Lake Management Plan.

He advised that the Water Quality Standards revised toxic list would be released for public comment soon and will be coming before the Board for approval. The Idaho Mining Association originally initiated the rulemaking for mercury, but a number of other toxic chemicals have been included. The proposed list is not stricter than the federal standards.

Nick Purdy asked if the Director thought it would be helpful for the Board to meet with the Coeur d'Alene Tribe. Director Allred believed it would be beneficial for the Board to meet with the Coeur d'Alene Tribal Council. He encouraged the Board to meet with other tribal councils who have similar issues as well.

Director Allred will continue to serve as Idaho's representative in the Coeur d'Alene Basin Commission after he retires from DEQ. DEQ plays a large role in those issues and may want to appoint its new director or someone else from the Department when a smooth transition can be achieved. The Commission made a decision to have the executive director of the Commission hired by DEQ. The executive director will be paid through a special overhead rate through DEQ, but there will be a wall between the executive director and DEQ. The Commission will supervise the position.

Dr. Joan Cloonan asked Director Allred if there was any way Idaho could avoid the federal arsenic drinking water standards that are coming to the Board for adoption by reference. The standards will place enormous difficulties on small communities. Director Allred replied that the only option would be to reject the standards and let the federal government administer them. He believed this would not be a good choice for Idaho. If DEQ is administering the standards, they will be able to work with the communities to mitigate the difficulties. He recommended the Board adopt the standards to keep the decisions at a state level. Dr. Cloonan

agreed and felt the adoption of the federal arsenic standard would not be popular, but believed it was better than the alternative.

**AGENDA ITEM NO. 3: FY2005 STATE WASTEWATER LOAN PRIORITY LIST**

Alan Stanford, DEQ Senior Water Quality Analyst, presented the FY2005 State Wastewater Loan Priority List for the Board's approval. DEQ conducts an active campaign to seek interest from communities in the loan and grant programs. The DEQ Engineers review and rate the applications. Public notice and a public hearing were provided. After the public review, the cities of Greenleaf and Roswell were added to the list and placed at the top due to serious public health threats from failing sewer systems that have resulted in raw sewage on top of the ground.

Director Allred said the problems in Greenleaf and Roswell are symptomatic of the problems going on in the Boise Valley due to many old and inadequate sewer systems. He was concerned with the safety of using ground water that is near the surface for drinking water, particularly in the lower Boise valley areas.

Chas Arris stated the DEQ Boise Region Office has been working closely with a lot of the small communities to find creative, proactive ways to avoid problems with old, inadequate sewer systems. DEQ encourages cities to upgrade their facility plans and develop long-range master plans. Communities can also look at pooling resources to create decentralized community systems. Selling the idea of regionalized waste management can be a real challenge in small communities.

Don Chisholm felt it was important to make the citizens in the communities aware of pending problems so they can prepare their local government to take necessary actions. Director Allred discussed the limited regulatory authority to force improvements to sewer systems.

- **MOTION:** Dr. Joan Cloonan moved the Board approve the FY2005 State Wastewater Loan Priority List as presented by the Department of Environmental Quality.
- SECOND:** Craig Harlen
- VOICE VOTE:** Motion carried. 5 ayes; 0 nay; 2 absent (MacMillan, McLaughlin).

**AGENDA ITEM NO. 4: FY2005 STATE WASTEWATER PLANNING GRANT PRIORITY LIST**

Alan Stanford noted that the same public notice and ranking process is used on all the priority lists being presented today.

- **MOTION:** Don Chisholm moved the Board approve the FY2005 State Wastewater Planning Grant Priority List as presented by the Department of Environmental Quality.
- SECOND:** Dr. Joan Cloonan
- VOICE VOTE:** Motion carried. 5 ayes; 0 nay; 2 absent (MacMillan, McLaughlin).

**AGENDA ITEM NO. 5: FY2005 STATE DRINKING WATER LOAN PRIORITY LIST**

- **MOTION:** Dr. Joan Cloonan moved the Board approve the FY2005 State Drinking Water Loan Priority List as presented by the Department of Environmental Quality.
- SECOND:** Nick Purdy
- VOICE VOTE:** Motion carried. 5 ayes; 0 nay; 2 absent (MacMillan, McLaughlin).

**AGENDA ITEM NO. 6: FY2005 STATE DRINKING WATER PLANNING GRANT PRIORITY LIST**

- **MOTION:** Dr. Joan Cloonan moved the Board approve the FY2005 State Drinking Water Planning Grant Priority List as presented by the Department of Environmental Quality.  
**SECOND:** Craig Harlen  
**VOICE VOTE:** Motion carried. 5 ayes; 0 nay; 2 absent (MacMillan, McLaughlin).

Director Allred asked about the success ratio of projects that receive planning grants going on to receive loans, from either DEQ or other sources. Bill Jerrel estimated it was around 90 – 95%. Director Allred pointed out that the loan program does not have enough money to fund the eligible projects. Only 9 out of 23 wastewater projects will be funded this year before DEQ's loan program runs out of money.

He recommended the Board look at ways to augment the funds for the loan program. The program has not been adequately funded since its creation. It may be possible to use the outstanding loans as the basis for the issuance of bonds through the State Bond Bank to generate money to augment the loan program. Legislation may be needed to update the statute that gives the Board authority to issue bonds. A number of legislators have expressed interest in helping with this matter. Director Allred predicted there would be an increasing demand on the loan program because of the number of old sewer systems that will soon need to be replaced.

Nick Purdy asked how the Board should follow up on the Director's recommendation. Chairman Agidius requested DEQ investigate whether legislation is needed, and if necessary, prepare draft legislation and check legislative interest in carrying the bill. Jon Sandoval, DEQ Chief of Staff, said there was a lot of interest from some legislators to look at a mix of funding and take advantage of a number of options that are available under the Idaho Code. He felt it was an appropriate time to determine the interest in the legislature and the Governor's office to move forward with this issue. Mr. Sandoval will begin working on the matter and report back to the Board.

**AGENDA ITEM NO. 7: CONTESTED CASE AND RULE DOCKET STATUS REPORT**

Doug Conde, Deputy Attorney General, briefly reported on the status of the contested cases filed before the Board and ongoing rulemaking efforts at DEQ. The hearing officer issued a decision in favor of DEQ in the Young's Septic Service v. DEQ contested case. Young's have filed a Petition for Review of the Hearing Officer's Order and the case will come before the Board at its August 5 meeting in Pocatello.

A date has also been set for an evidentiary hearing (before a hearing officer) on the Ring Industrial Group contested case. Director Allred indicated this case involves a partial denial by DEQ of product approval for the 1201P drainage system (wastewater system). DEQ gave initial approval of the system, but after review, the District Health Department requested DEQ disapprove the system in part.

Doug Conde commented on an issue that causes some frustration in the contested case process. Many contested cases settle before ever going to hearing. Frequently, this is because additional information is submitted to DEQ after the contested case has been filed. Often, if that

same information had been submitted during the public comment period, the contested case could have been avoided completely.

This has led to a situation where companies and other petitioners know they can continue to gather and submit new information after the agency decision, through the contested case process. Mr. Conde felt the only way to avoid this was to either have a contested case process that leads to the issuance of a permit; or, to change the Administrative Procedures Act (APA) so that once DEQ has issued a permit or made a decision, the contested case is a record review. The appeal would be based upon the information DEQ had in front of it when it took the action. He noted that this is how all the federal permit appeals are conducted.

Mr. Conde did not recommend the first option. He believed the correct way to handle the process would be to have a record review. The record is developed, the public and permittee have an opportunity to make comments and submit information they feel is relevant, the agency takes action, and the appeal is based on the information the agency had in front of it at the time they made the decision.

Chairman Paul Agidius observed that until a decision is made, the permittee may not know what data is needed and where to best spend their limited resources. Doug Conde acknowledged the concern, but hoped that when DEQ puts out a proposed decision there could be feedback to the permittee during the public comment period to work through issues in an interim process.

Chairman Agidius commented that it may not be the most efficient process, but if it leads to agreement and resolution and provides the best end result, it may be what is needed. Craig Harlen agreed, noting that the fact that the settlements are occurring may indicate that the process is providing the motivating force to bring the parties to agreement.

Director Allred pointed out that the current process is very expensive. He believed the process suggested by Doug Conde would be much less expensive for both DEQ and the petitioners. It is costly for DEQ to duplicate so much work.

Dr. Joan Cloonan favored the record review process if it included a policy or process with sufficient interaction between DEQ and the permittee, from the beginning, to provide an interim process to resolve issues. In the past, she has observed some cases where the permittee sees many versions of the draft permit with a lot of discussion, and this is very productive. However, there have been some cases where DEQ has been hesitant to release the draft permit until it is almost to the public draft form. She felt this was counter-productive because it does not allow the give-and-take discussions needed to resolve issues.

Don Chisholm commented that the current process allows the permittee to file its comments at the very end of the public comment period. This does not allow other parties to respond to those comments. He felt it would be fairer to have the permittee file its comments first, then allow the public to review those comments and respond if needed. An opportunity could also be provided to allow the permittee to respond to the public comments. This would allow an open exchange of information, and the public could respond to the issues without having to become an intervenor in a contested case.

Mr. Chisholm also believed a record should not have to be perfect to be upheld, and there should not be procedural traps in the process. If the permitting process was more interactive and

the public was allowed to respond to the permittee's comments, and the permittee could then respond to the public comments, he felt it would build a better record and more issues could be resolved.

Doug Conde believed there were some adjustments that could be made to the current process, but because of the APA and the statutes, it would take a legislative change to go to a record review.

Chairman Paul Agidius thanked Mr. Conde for his comments and asked him to bring any proposals he developed back to the Board for consideration. Don Chisholm suggested if Mr. Conde was proposing legislation to resolve the problem, he prepare draft legislation for the Board's review. Mr. Conde will prepare some written concepts for the Board's consideration at a future meeting.

**AGENDA ITEM NO. 8:                    OVERVIEW OF ENVIRONMENTAL ISSUES IN THE REGION**

Mike McGown, Administrator of the DEQ Boise Region Office, gave a PowerPoint presentation (Attachment 1) and discussed some of the issues facing the Boise Region. The region includes ten counties in Southwest Idaho and has the largest population of any of the DEQ regions in the state. The region faces many rural and urban issues, as well as growth problems.

Mr. McGown discussed the region activities in the Waste and Remediation Program. The region is working with the health districts to conduct Nutrient and Pathogen Evaluations. Nick Purdy commented the developers of subdivisions he has worked with are very critical of the Nutrient and Pathogen Evaluations. The studies can be very expensive for small subdivisions.

Chas Ariss explained the studies were a simple hydrogeologic modeling process needed to assure compliance with the Idaho Ground Water Quality Rules that set the Nitrate MCL standard for drinking water. The process looks at how a subdivision will manage its wastewater and drinking water and its impact on nitrate levels in the ground water. If the study shows that the wastewater system proposed by the subdivision will increase the nitrate concentrations in the ground water above 1 milligram per liter, DEQ requires that the subdivision perform some type of wastewater pretreatment prior to subsurface disposal. It can be controversial because it can add additional costs for the study and the pretreatment.

Mr. Ariss discussed the importance of the studies and the cooperative efforts of a number of agencies to address nitrate problems throughout Idaho. This is particularly important in the Nitrate Priority Areas, where nitrate concentrations are near or above the 10 milligrams per liter standard. When nitrate concentrations approach the 10 milligrams per liter level, there is the potential for human health problems such as methemoglobinemia in infants and children and immuno supression and greater susceptibility to diseases in the elderly.

Mr. Purdy thought the concern was that the studies do not take into account the previous use of the land, such as a feedlot or farming, and the subdivision may put much less nitrogen in the ground water than the previous use.

Director Steve Allred stressed the importance of protecting the ground water quality and solving the nitrate contamination problem. He believed no one had the right to contaminate the ground water, and the fact that it is already contaminated is not justification for continuing to

contaminate it. He stated his concern and disappointment over the level of contamination that has been allowed in the past and fervently believed the ground water must be cleaned up. An important factor is using wastewater systems that deal with nitrates. Septic systems do not deal with nitrates. Alternative systems can be used, but the nitrogen and pathogen study or comparable data is needed to identify what is needed.

Director Allred asserted the same expectation and requirements to protect the ground water should be applied to everyone. He did not believe developers should be allowed to do things industry and others are not allowed to do. For example, Simplot and Amalgamated Sugar must show a five-year trend of improving nitrate water quality or their permits are not renewed. He acknowledged that it could cost more to do the studies and use more protective systems, and that may inhibit development. However, he felt strongly that if these actions are not taken now, the near surface water would not be drinkable in any of the urban areas. He questioned the social cost of not being able to use the ground water.

The Boise Region program managers, June Ramsdell, Airshed Manager; Craig Shephard, Watershed Manager; and Chas Ariss, Engineering Manager; each discussed their programs and briefly reported on the projects and issues in their respective programs.

Joe King, Senior Management Analyst, reported on the pollution or effluent trading program. He discussed the program's history and explained how the program works. DEQ has had the program in place since April 2000, but no trades have been made yet. When the Snake River Hells Canyon TMDL is issued, it will allocate reductions, and that should clear the way for trading to begin. The goal of the program is to improve water quality in the most cost-effective way.

**AGENDA ITEM NO. 9:            LOCAL REPORTS AND ITEMS BOARD MEMBERS MAY WISH TO PRESENT**

No reports were presented.

The meeting adjourned at 12:10 p.m.

/s/

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Paul C. Agidius, Chairman

/s/

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Dr. Joan Cloonan, Secretary

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Debra L. Cline, Management Assistant and Recorder