



State of Idaho
DEPARTMENT OF ENVIRONMENTAL QUALITY
BOARD OF ENVIRONMENTAL QUALITY

1410 North Hilton, Boise, ID 83706-1255, (208) 373-0502

C. L. "Butch" Otter, Governor
Curt Fransen, Director

MEMBERS OF THE BOARD

L. Nicholas "Nick" Purdy
Chair
Box 686
Highway 20
Picabo, ID 83348

Carol Mascareñas
Vice-Chair
5000 Baltimore Circle
Idaho Falls, ID 83401

Dr. John R. MacMillan
P.O. Box 712
Buhl, ID 83316

Kermit V. Kiebert
P.O. Box 970
Ponderay, ID 83852

John McCreedy
1951 S. Saturn Way
Ste. 100
Boise, ID 83709

Kevin C. Boling
5881 N. Ferdinand Court
Coeur d'Alene, ID 83814

Beth Elroy
P.O. Box 6, MS 01-602
Boise, ID 83707

IDAHO BOARD OF ENVIRONMENTAL QUALITY

MINUTES

October 11, 2012

The Board of Environmental Quality convened on October 11, 2012 at 9:00 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. John R. "Randy" MacMillan, Member
Kermit Kiebert, Member
John McCreedy, Member
Beth Elroy, Member

BOARD MEMBERS ABSENT

Kevin Boling, Member

LEGAL COUNSEL

Douglas M. Conde
Harriet A. Hensley

DEPARTMENT OF ENVIRONMENTAL QUALITY STAFF PRESENT

Curt Fransen, Director
Lisa Carlson, Deputy Attorney General, DEQ
Paula Wilson, Rules Coordinator
Rosie Alonzo, Management Assistant, Assistant to the Board
Orville Green, Administrator, Waste Management & Remediation Division
Barry Burnell, Administrator, Water Quality Division
Michael Simon, Acting Administrator, Air Quality Division
Pete Wagner, Regional Administrator, Boise Regional Office
Mike Piechowski, Staff Engineer
John Brueck, Hazardous Waste Regulation and Policy Coordinator
David Luft, Regional Airshed Manager, Boise Regional Office
Kari Kostka, Policy Analyst

BOARD ASSISTANT

Rosie Alonzo
(208) 373-0240

OTHERS PRESENT:

Jack Lyman, Idaho Mining Association
Lynn Tominaga, IGWA, IWRA
Elizabeth Criner, Veritas Advisors, 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 Nick Purdy called the meeting of the Idaho Board of Environmental Quality (Board) to order at 9:00 a.m. Ms. Rosie Alonzo took roll call. All Board members were present with the exception of Mr. Kevin Boling.

Chairman Purdy introduced the newest Board member, Ms. Beth Elroy. Ms. Elroy provided a brief background on herself. Chairman Purdy also welcomed back Ms. Carol Mascareñas. Ms. Mascareñas has been reappointed for another four years to serve on the Board.

The Chairman 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 Curt Fransen presented his report before the Board:

Staffing Changes

There were some key staffing changes made at DEQ. Mr. Martin Bauer, who was the Air Quality Administrator, resigned a month ago to work for Micron. Mr. Mike Simon, Air Quality Permitting Manager will be serving as the acting administrator. DEQ is in the process of seeking a replacement for Mr. Bauer among internal and external candidates. DEQ is hoping to announce an appointment in the near future.

Mr. Paul Blas, DEQ's Human Resource Officer, has also resigned to work for Saint Luke's in the Wood River Valley. DEQ has gone through the interview process and has hired Ms. Sharon Haylett as his replacement. Ms. Haylett has worked in DEQ's Human Resource Office for several years so already knows the agency well and will be able to hit the ground running.

NPDES Primacy Consideration

The National Pollution Discharge Elimination System (NPDES) program under the Clean Water Act regulates permitting for point source discharges into navigable waters. Idaho is one of four states that does not have primacy for this program. This is an issue that has been discussed since the early 2000s with regard to the costs, challenges, and benefits of the state taking on primacy of this program. Recently, a senate concurrent resolution proposed setting up a legislative committee to examine the issue. The resolution did not pass, but the Interim Natural Resources Committee was directed to take up the issue over the summer. The committee met on the issue at the end of September. At that meeting, Mr. Barry Burnell made a presentation outlining the pros and cons of NPDES primacy along with timelines. Although there is much support from businesses and citizens,

Director Fransen cautioned that a major factor involves the costs for Idaho to run the program. The cost of the program is currently carried by EPA but would be shifted to Idaho and covered through general fund support or fees paid by the permittees. While many are frustrated by the permits issued by EPA, state issued permits would still have to ensure that water quality standards and criteria are met. DEQ will also need to have the necessary science to support and defend the permits issued. The latest cost estimate was about \$2.6 million dollars per year to run the program and 23 FTEs. Aside from those ongoing costs, it is estimated that about \$300,000 per year for the first three years is necessary to get the program up and running. By the time the state obtains primacy and completes all required processes, it is estimated that about five to seven years will have passed before the NPDES program is running completely, making this a major undertaking for DEQ.

Director Fransen suggested to the Chairman that if the state proceeds forward with gaining primacy, it is an issue DEQ can bring to the Board in the future for informational purposes.

Water Quality Human Health Toxics Criteria

In 2006 through legislative action, Idaho adopted the Human Health Toxics Criteria based on the fish consumption rate of 17.5 grams/day. The previous fish consumption rate was 6.5 grams/day. In May 2012, EPA disapproved the criteria. This left DEQ with the option to have EPA promulgate the criteria for the State of Idaho or for the state to repromulgate its Human Health Toxics Criteria. DEQ has chosen the latter. In August, EPA was notified that DEQ would begin a rulemaking process to consider the appropriate fish consumption rate in Idaho and the appropriate Human Health Toxics Criteria. Director Fransen called on Mr. Burnell to give further background on the Human Health Toxics Criteria.

Mr. Barry Burnell, Administrator for the Water Quality Division, introduced himself. He indicated that DEQ's first negotiated rulemaking meeting was held on August 4, 2012 to consider fish consumption rates and the Human Health Toxics Criteria. DEQ's Dr. Jeff Fromm, Toxicologist, and Mr. Don Essig, Water Quality Standards Lead, provided presentations to describe the human health criteria and policy issues that DEQ would face.

At the first negotiated rulemaking, EPA also gave a presentation to describe the potential impact of the rulemaking on permittees. The focus was on ground water general permits that have limits for perchloroethylene and trichloroethylene type compounds. Water treatment plants for drinking water systems that go through disinfection and discharge trihalomethanes were also discussed. The effects on permits for the paper and pulp industry were included in the presentation as well. Municipalities will have additional requirements to monitor their discharges and depending on pollutant scan results, permit limits may be established. The fundamental question before the state is whether or not there is sufficient information on local and regional studies in existing literature for the state to promulgate and move forward with the standard.

DEQ has provided stakeholders two opportunities for public comment on this rulemaking. The first comment period ends today. DEQ has reviewed nineteen different

studies of the human health criteria that are local and regional in nature. Out of the nineteen studies, six passed the screening step. DEQ asked the regulated public to provide specific comments on those six studies by the 7th of November. The next negotiated rulemaking meeting will be held on November 28 where DEQ will decide if there is enough data. One essential question to address is whether the state should rely on broad, national studies or only look to regional studies which may or may not reflect the fish consumption rates in Idaho. There are a number of policy decisions that will have to be made and if the Board is interested, DEQ can host a broader discussion on this issue at a later date.

Director Fransen also added that the State of Oregon recently adopted new toxic criteria based on a fish consumption rate of 176 gram/day, ten times the rate DEQ proposed.

Bunker Hill Record of Decision Amendment

In August, EPA issued a new Record of Decision (ROD) for the Bunker Hill Superfund CERCLA clean-up. DEQ worked with EPA over the last couple of years to reach this point. The ROD calls for \$635 million in additional work for the Coeur d'Alene Basin and will take about 30 years. The work is broken down into three parts:

1. Remedy protection to control water that is discharging from gulches and side creeks to prevent damage to remediated areas.
2. Control and remove mine waste as part of extensive mine and mill clean-up.
3. Institute active water treatment by collecting shallow groundwater from the Box area and later from the Upper Basin to be piped and treated. This will help prevent groundwater from contributing to zinc loading in the south fork of the Coeur d'Alene.

There is about \$700 million set aside in various trust accounts for the work. DEQ expects another ROD for the lower basin addressing contamination across the flood plain. General remediation work continues even though the specific human health work will be completed soon. Focus will then shift to water quality improvements.

Under previous RODs EPA will also be providing funding to local road jurisdictions to replace and repair portions of paved roads that were damaged by the cleanup work and that serve as barriers to underlying contamination.

Canyon County Appeal

Canyon County's appeal of the Board's contested case decision regarding the county's inspection and maintenance auto emissions program was dismissed. Director Fransen asked Deputy Attorney General Lisa Carlson to summarize the basis of the dismissal.

Deputy Attorney General Carlson explained that about a year ago, the Board adopted the recommended order by the hearing officer dismissing Canyon County's petition to not have their vehicles tested. Canyon County appealed the order to the district court. DEQ moved to dismiss as Canyon County failed to serve both Chairman of the Board and the Director of DEQ. The court granted the motion to dismiss. DEQ also asked for attorney's fees for time spent on the civil action only and not on administrative action. Canyon County did not oppose the request.

Legislative Briefings in Regions

Director Fransen indicated that he will be engaging in legislative briefings across the state in early December. There will be many new legislators this upcoming session and these open houses allow DEQ to give an overview of programs and discuss funding, legislative priorities for the upcoming session, and regional issues. DEQ is inviting and encouraging Board members to participate in their region. Director Fransen stood for questions from the Board.

Mr. John McCreedy asked if schedules were set for the legislative open houses. Director Fransen replied that the dates are not yet set but are anticipated for early December.

AGENDA ITEM NO. 2: ADOPTION OF MEETING MINUTES

Minutes of May 3, 2012.

- **MOTION:** Dr. Randy MacMillan moved that the Board adopt the May 3, 2012 minutes as prepared.
- **SECOND:** Mr. John McCreedy.
- VOICE VOTE:** Motion carried unanimously.

AGENDA ITEM NO. 3: RULES AND STANDARDS FOR HAZARDOUS WASTE, DOCKET NO. 58-0105-1201 (PENDING RULE)

(UPDATE OF FEDERAL REGULATIONS INCORPORATED BY REFERENCE.)

Mr. Orville Green, Waste and Remediation Division Administrator, introduced himself along with Mr. John Brueck, Hazardous Waste Regulation and Policy Coordinator.

Mr. Green stated that the rule docket No. 58-0105-1201 describes the adoption by reference of the federal hazardous waste regulations that were promulgated with effective dates of July 1, 2011 through June 30, 2012. He went on to explain that this routine annual procedure is used to satisfy the consistency and stringency requirements of the Idaho Hazardous Waste Management Act and that it is necessary to maintain primacy and authorization from EPA for DEQ to operate the federal RCRA program. Assumption of primacy of hazardous waste control from the federal government is also required by the Hazardous Waste Management Act. No public hearing was requested or held. There will be no increased cost for the regulated community. This rule does not regulate an activity not regulated by the federal government. There were no controversial issues in this rulemaking update, and the proposed rule is not broader in scope or more stringent than federal regulations, nor does it regulate an activity not regulated by the federal government.

Mr. Green mentioned that the only rule changes made were references to the Code of Federal Regulations where the date was changed from July 1, 2011 to July 1, 2012. There were three regulations promulgated by EPA that are now effective. The first had to do with carbamate chemicals, typically used as pesticides, where Best Demonstrated Available Technologies (BDAT) have now been allowed for compliance with Land Disposal Restrictions (LDRs) and Universal Treatment Standards where numerical standards are hard to ascertain. Another minor

change relates to notes put in a manifest form for distribution purposes; it needed to be in red ink. It was later clarified that the notes did not have to be in red ink as long as they were distinguishable, such as bolded, italicized, or different colored lettering. The final change was a technical correction to the federal rules. The correction involved a typographical error and another tweak to ensure that certain recycling companies met land disposal restriction (LDR) for reporting and notification requirements. None of the changes would have a large effect in Idaho.

DEQ recommends that the Board adopt these rules as proposed. Mr. Green stood for questions from the Board.

Ms. Elroy inquired about the change to ensure certain recycling companies meet LDR requirements and whether we have any in Idaho. Mr. Brueck responded that it was really a broad LDR revision. He gave an example of the use of carbamate-type chemicals being used as pesticides. As Mr. Green noted, the BDAT were introduced to meet those LDRs. Regarding the recyclers, numbers are currently unknown but will be better determined by this final provision requiring certification and notification to document treatment.

Chairman Purdy asked if there were further questions from the Board. There were none. He asked if the public had any comments on this pending rule. There were none.

- **MOTION:** Dr. Randy MacMillan 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. 58-0105-1201 with the pending rules becoming final and effective upon the adjournment sine die of the First Regular Session of the Sixty-Second Idaho Legislature if approved by Legislature.
 - **SECOND:** Mr. Kermit Kiebert.
- VOICE VOTE:** Motion carried unanimously.

AGENDA ITEM NO. 4: IDAHO RULES FOR PUBLIC DRINKING WATER SYSTEMS, DOCKET NO. 58-0108-1101 (PENDING RULE)

(RULEMAKING INITIATED TO DEFINE TERMINOLOGY AND TO ESTABLISH CONSISTENT REQUIREMENTS FOR NEW WATER TREATMENT TECHNOLOGIES SUCH AS MEMBRANE FILTRATION AND ULTRAVIOLET (UV) DISINFECTION.)

Mr. Barry Burnell, Water Quality Division Administrator, introduced himself and Mr. Mike Piechowski, Staff Engineer, who was present to assist with technical questions. Mr. Burnell proceeded to present the Idaho Rules for Public Drinking Water Systems. This rulemaking was necessary to establish the requirements for the design and operation of membrane filtration and ultraviolet disinfection technologies. The pilot testing requirements were modified and the preliminary engineering report sections were reorganized. In addition, there were some smaller housekeeping changes made. Mr. Burnell went on to describe the rulemaking process. During that period, one comment was received. DEQ did not hold a public hearing for the proposed rule as none was requested. There are no increases or additional costs to the regulated community. The results of the proposed changes are primarily for clarification purposes with the addition of membrane filtration and UV disinfection. There were no controversial issues.

Mr. Burnell also pointed out several issues that were discussed, one being the appropriate timeframe for the repair or replacement of failed backflow assemblies. DEQ settled on a timeframe of 10 days to accommodate assemblies that are not readily available and also accounting for time needed for the shipping of parts.

Another issue discussed was public notification during depressurization events when there is a potential for contaminants to enter into the drinking water system. DEQ's rule stipulates that when a depressurization occurs, the water supplier is to notify affected consumers. And when the repairs are made, DEQ urges the public water system to again notify the consumer. This is not a requirement but rather at their discretion. Should bacterial monitoring indicate drinking water is not safe for consumption; the water system is obligated to inform consumers.

As far as stringency, this rule is implementing the Safe Drinking Water Act. The rule is not broader in scope or more stringent than the federal regulations. However, this rule also regulates the engineering and design requirements for public water systems that are not a part of the Safe Drinking Water Act.

In 2005, the legislature passed Senate Bill 1220 requiring DEQ to update the drinking water rule and wastewater rule to incorporate engineering and design standards. That was done in 2006 and 2007. DEQ is now updating the drinking water rules to include membrane filtration and UV disinfection in the standards.

Mr. Burnell gave an overview of the changes stemming from the incorporation by reference and definitions in the rule. Mr. Burnell and Mr. Piechowski stood for and responded to questions from Board members.

Dr. MacMillan pointed to the Maximum Log Removal Table under section 300 for Filtration and Disinfections and inquired as to why specific species for giardia are being identified. Mr. Burnell responded that DEQ used to use total coliform as an indicator organism of contaminants in surface waters but is now using E-Coli. Giardia lamblia is still the same indicator organism for DEQ to base its test methods and is the same equivalence.

Dr. MacMillan also asked where the numbers came from for maximum log removals and if there is a threshold of giardia or cryptosporidium that does not cause disease. Mr. Piechowski replied that the numbers primarily come from EPA as directed under the Safe Drinking Water Act. This is the maximum log removal you get with certain technology. Mr. Burnell explained the percentage of log removal but that the dose that can cause gastrointestinal disease varies person to person. Mr. Piechowski agreed with this statement. Mr. Burnell mentioned that this is a Safe Drinking Water Act update.

Dr. MacMillan continued by referring to section 525 for Facility and Design Standards under the subsection for Membrane Selection and Design Consideration and asked how DEQ would be able to accept another state's challenge test. Mr. Burnell answered that when membranes are manufactured, a test is done to demonstrate their ability to remove seeded organisms. Those tests can be very expensive. The purpose of accepting another state's challenge test report in the State of Idaho is to avoid repeating the test. Mr. Piechowski commented that these tests are usually done by a third party. Some states have dedicated staff to complete testing where DEQ, unfortunately, does not have that staff. Additionally, some states have 50-100 membrane plants

compared to Idaho with only six. A pilot study is needed to demonstrate that it will meet the removal requirements.

Dr. MacMillan asked if the pilot study is done at the facility. Mr. Piechowski answered affirmatively.

Ms. Mascareñas inquired whether different facilities and states use the Membrane Filtration Guidance Manual as a standard. Mr. Piechowski replied that in the performance tests, there is a large section called integrity testing that describes how this is done.

Chairman Purdy asked if there were any other questions from the Board. There were none.

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

- **MOTION:** Dr. Randy MacMillan moved that the Idaho Board of Environmental Quality adopt as pending rules the Idaho Rules for Public Drinking Water Systems as presented in the final proposal under Docket No. 58-0105-1101 with the pending rules becoming final and effective upon the adjournment sine die of the First Regular Session of the Sixty-Second Idaho Legislature if approved by the Legislature.
- **SECOND:** Ms. Carol Mascareñas.
VOICE VOTE: Motion carried unanimously.

AGENDA ITEM NO. 5: RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO, DOCKET NO. 58-0101-1201 (PENDING RULE)

(RULEMAKING TO MAKE VARIOUS "HOUSEKEEPING" REVISIONS SUCH AS UPDATES FOR CONSISTENCY WITH FEDERAL REGULATIONS, CLARIFICATION, AND TYPOGRAPHICAL CORRECTIONS TO CERTAIN AIR QUALITY PERMITTING RULE SECTIONS, RELATED DEFINITIONS, AND THE TOXIC AIR POLLUTANT SECTIONS.)

Mr. Michael Simon, Acting Administrator for the Air Quality Division, presented the next three proposed rules. The first rule under Docket No. 58-0101-1201 was for general housekeeping revisions to be consistent with federal regulations, to clarify definitions, to fix some typographical errors DEQ had in its Toxic Rules, and to update DEQ's rock crusher permit by rule. DEQ held a negotiated rulemaking that was completed in April. There was a public comment period scheduled and a public hearing scheduled but no comments were received.

Mr. Simon went on to explain the changes to this rule. DEQ updated three definitions that apply to DEQ's permit program: "modification" now includes a date to be consistent with the federal definition; and the terms "significant" and "significant contribution" relating to fine particulate matter threshold and concentrations are now defined in line with the federal rule. These are used in the Prevention of Significant Deterioration (PSD) Program.

Clarifications were made in the Permit to Construct Exemptions rules to interpret these sections and define how to go through the exemption process. Under the Category II Exemption for pilot plants, a typographical error correction was made. The third clarification was in the Annual

Report for Toxic Air Pollution Exemptions where a source qualifying for an exemption submits a report for that modification. If there are no future modifications, no additional reporting is needed.

The next set of updates was to the Toxic Air Pollutants Non-Carcinogenic and Carcinogenic Increments where DEQ identified typographical errors and the corrections were made. The final update was to streamline the Nonmetallic Mineral Processing Plant and Permit Requirements sections to be consistent with federal regulation changes.

Mr. Simon commented that this rulemaking imposes no additional costs to the regulated community. This rulemaking does involve typographical corrections in the Toxic Air Pollutant Increments rules which do regulate an activity not regulated by the federal government. The federal government does not regulate toxic air pollutants in the State of Idaho. It was also noted that if a toxic air pollutant becomes subject to a federal regulation, that federal regulation applies in lieu of state rules. The remainder of the rule does not regulate an activity not regulated by the federal government and is not boarder in scope or more stringent than the federal regulation. Mr. Simon stood for any questions from the Board.

Ms. Elroy referenced the Section 106 designation of “significant” under Particulate Matter, subsection three (3) listing ten (10) tons per year of direct PM_{2.5}; forty (40) tons per year of sulfur dioxide emission; and forty (40) tons per year of nitrogen oxide emissions. Ms. Elroy questioned how it is different from ii. and iii. and asked why they are listed together. Mr. Simon responded that when PM Fine came out as a new National Ambient Air Quality Standard, all states deferred to the PM₁₀ to regulate under the New Source Review (NSR) Program. Last year, the federal government issued NSR implementation rules for PM Fine that included the “significant” emission levels. This also established significant rates for sulfur dioxide and nitrogen oxide where you might also trigger a review for PM Fine. That is what is reflected.

Ms. Elroy pointed out that for a regulated industry, the way it is listed under part three (3) can be confusing as to whether it is inclusive or stand-alone. Mr. Simon acknowledged that concern and explained that DEQ listed it out exactly like it was written in the federal rule.

Mr. McCreedy had the same question about the semicolons and asked whether part three (3) should be read as if the semicolons had an “and” following them or as if the semicolons had an “or” following them for clarification. A discussion followed regarding different options for making the rule less confusing.

Chairman Purdy asked the Board if they would like to make the above changes before adopting it into a pending rule. Deputy Attorney General Carlson added that DEQ really tries to adopt language verbatim from the federal law and then use the interpretation from the federal law as guidance. She would like to have the opportunity to take a look at the federal language and guidance to determine whether DEQ should wordsmith the language or rather, include in the administrative record the guidance used to interpret the language.

There was further discussion on possible changes and timelines for making changes.

Mr. McCreedy added that under the Permit Requirements section, the term “reconstruction” is not defined. Mr. Simon responded that DEQ does not define reconstruction as it is a federal

term. Mr. McCreedy mentioned that as a Board member, they have the responsibility of defining clarity for the regulated community. He would like to have this addressed at first opportunity in the future.

Chairman Purdy asked the Board if they would like to pass the rule or come back to it to clarify later today or at a later date. Chairman Purdy noted there was no one from the public to comment.

Dr. MacMillian had one more question and referred to the "Substances" section. He asked what the abbreviation "ANTU" stood for. No one knew the answer, but Deputy Attorney General Carlson stated that it could be researched and an answer brought back at the end of the meeting.

Chairman Purdy asked for a motion to defer agenda item number five.

- **MOTION:** Mr. John McCreedy moved that the Idaho Board of Environmental Quality defer action on the adoption of the pending rules the Rules for the Control of Air Pollution in Idaho as presented in the proposal under Docket No. 58-0101-1201 until further corrections are made later today in the pending rule.
- **SECOND:** Ms. Beth Elroy.
- VOICE VOTE:** Motion carried unanimously.

AGENDA ITEM NO. 6: RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO, DOCKET NO. 58-0101-1202 (PENDING RULE)

(REVISE THE MINIMUM STANDARDS FOR THE MOTOR VEHICLE INSPECTION AND MAINTENANCE PROGRAM BY ALLOWING THE GOVERNING AUTHORITY TO GRANT EXTENSIONS FOR MEETING EMISSIONS TESTING REQUIREMENTS AND ELIMINATING THE TEST AND REPAIR RESTRICTIONS ON LICENSED INSPECTION STATIONS.)

Mr. Mike Simon, Air Quality Division Acting Administrator, continued with the next rule pertaining to emissions testing. He invited Mr. David Luft, Boise Regional Office Airshed Manager, to assist in the presentation and to help answer questions.

Mr. Simon explained that the purpose of this rulemaking is to revise the minimum standards for the Vehicle Inspection and Maintenance Program. This change allows the governing authority to grant extensions for various cases where vehicles or vehicle owners are temporarily located outside of a testing area such as military personnel. The revision also eliminates the restriction that test and repair facilities conducting inspections cannot make repairs. It was adopted as a temporary rule in May 2012 and is currently effective. Due to the simple nature of this rule, there was no negotiated rulemaking. The public comment period ended in July, but no comments were received. There are no additional costs to the regulated community. This rule does not regulate an activity not regulated by the federal government nor is it more stringent than federal regulations. The Clean Air Act does require a vehicle inspection and maintenance program in marginal ozone nonattainment areas. This rule is broader in scope than the federal law as it applies to sources in an area not yet designated nonattainment. At the conclusion, Mr. Simon and Mr. Luft stood for questions from the Board.

Dr. MacMillan inquired about the honesty of an inspection station when they say a vehicle has failed. Mr. Simon referred the question to Mr. Luft who indicated that DEQ received numerous requests from motorists and shops for this change, particularly when testing shops have always worked on a specific vehicle. He explained that there are some safeguards built into the system. For example, when the emissions test is complete, the customer is handed a copy of the test which states whether the vehicle passed or failed and provides the trouble code which resulted in a failed test. Motorists can easily research the codes themselves. Or, with tailpipe tests, the customer is provided numbers for high emissions ranges and can evaluate where their vehicle falls.

Dr. MacMillan asked if the emission testing machines are certified or calibrated. Mr. Luft replied that for older vehicles, the equipment is calibrated on a regular basis by the contractor. Occasionally, DEQ will do audits of the stations as well. For newer vehicles that are tested with the OBD2 system, there are other safeguards in place. For instance, inspectors must log into the system before testing a vehicle. There are also flags in the system to catch anomalies providing both human and software protections for the consumer. Deputy Attorney General Carlson added that the federal rules do not require the testing and repairs to be separate. Where it began and is required is under the Northern Ada County Plan run by the Air Quality Board. DEQ tried to keep their plan somewhat similar when rules were written for the statute. Now the Canyon County Plan does not require the two be separate and is consistent with federal law.

Chairman Purdy mentioned that he was under the impression the need for this program would eventually be going away. Mr. Luft said that while the ozone design value has decreased over the last several years, it is still above the trigger level for the emissions testing program. The expectation is that in the next couple of years, ozone standards will be lowered by EPA which will make compliance with the standard even more difficult.

Director Fransen added that DEQ is required to prepare a report along with a recommendation for the legislature this coming session regarding the continuation of the program. DEQ is in the process of putting this report together which will indicate that the emissions reduction is greater than we had anticipated going into the program. The program is necessary, however, as the Valley is still above the trigger level and because EPA is anticipated to lower standards. This program was designed as a preventative measure to try to keep the Valley out of nonattainment. DEQ might pursue recommended modifications to make it easier for residents of Canyon County to comply.

Ms. Mascareñas asked if that report is something the Board could be briefed on. Director Fransen indicated that if there is a November meeting, DEQ can do that.

Chairman Purdy asked if there were any further questions from the Board. There were none. He asked if there were any comments from the public. There were none.

- **MOTION:** Mr. John McCreedy 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. 58-0101-1202 with the pending rules becoming final and effective upon the adjournment sine die of the First Regular Session of the Sixty-Second Idaho Legislature if approved by the Legislature.

- **SECOND:** Ms. Carol Mascareñas.
VOICE VOTE: Motion carried unanimously.

AGENDA ITEM No. 7: RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO, DOCKET No. 58-0101-1203 (PENDING RULE)
(UPDATE OF FEDERAL REGULATIONS INCORPORATED BY REFERENCE.)

Mr. Mike Simon, Air Quality Division Acting Administrator, presented the final air rule under Docket No. 58-0101-1203. This is the annual incorporation by reference, necessary to ensure that DEQ's air rules are consistent with federal regulations. DEQ revised the date listed in the regulations to July 1, 2012 and updated the definition of "major facility" by adding the major source thresholds for greenhouse gases.

DEQ determined that a negotiated rulemaking was not necessary due to the simple nature of this rule. DEQ did schedule a public comment period and public hearing which was conducted September 5, 2012. No comments were received on this proposed rule. There are no additional costs to the regulated community. This rule does not regulate an activity not regulated by the federal government nor is it more stringent than federal regulations.

Mr. Simon explained that under the definition of major facility, a greenhouse gases subsection needed to be included. He also pointed out that under the section Incorporations by Reference, the Prevention of Significant Deterioration rule was removed because they are incorporated by reference. Mr. Simon stood for questions from the Board.

Mr. McCreedy inquired if DEQ anticipates additional permit activity in the state under this new greenhouse gas definition. Mr. Simon said he is aware of one facility for which DEQ is now writing a Title V permit. As the rule was being promulgated by the federal government, DEQ did an outreach to facilities in the state, especially to synthetic minors, to look at greenhouse gases.

Ms. Elroy asked with this addition, whether there are any implications for the permit fee structure. Mr. Simon replied that there are none. The structure of the fee rule remains the same.

Ms. Elroy asked if the actual language in the section of the air rules for permit fees is clear enough and whether it includes only other pollutants or greenhouse gases as well. Mr. Simon indicated that by the way it's structured, only the pollutants listed are required for fees and that greenhouse gases are not included.

Chairman Purdy asked if there were any further questions from the Board. There were none.

- **MOTION:** Ms. Carol Mascareñas 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. 58-0101-1203 with the pending rules becoming final and effective upon the adjournment sine die of the First Regular Session of the Sixty-Second Idaho Legislature if approved by the Legislature.
- **SECOND:** Mr. Kermit Kiebert.
VOICE VOTE: Motion carried unanimously.

AGENDA ITEM NO. 8: RULES FOR THE ADMINISTRATIVE PROCEDURE BEFORE THE BOARD OF ENVIRONMENTAL QUALITY, DOCKET NO. 58-0123-1201 (PENDING RULE)

(REVISE THE RULES OF ADMINISTRATIVE PROCEDURE BEFORE THE BOARD OF ENVIRONMENTAL QUALITY FOR CONSISTENCY WITH THE 2012 AMENDMENT TO THE IDAHO ADMINISTRATIVE PROCEDURE ACT ENACTED UNDER SENATE BILL 1366.)

Ms. Paula Wilson, Rules Coordinator, presented the rule for Deputy Attorney General Doug Conde as he was not present. This past session, the Legislature passed Senate Bill 1366 which made some revisions to the negotiated rulemaking section of the statute. Most of the requirements in the bill DEQ already follows, however, DEQ's administrative rules needed brought up to date.

Ms. Wilson described the language changes made in Section 811 for the publication in Idaho Administrative Bulletin by placing a statement in the notice of proposed rulemaking when formal rulemaking is not feasible.

Under Section 814, language was also changed to be consistent with the statute where DEQ will be required to produce a written negotiated rulemaking summary. Chairman Purdy requested that this summary also be made available to the Board. Ms. Wilson said that DEQ would include the summary in the Board packet. She stood for questions from the Board.

Dr. MacMillan asked if there is a legal definition for the word "consensus" and whether it is 100% agreement. Deputy Attorney General Carlson said that consensus does not mean that everyone agrees to every word or every piece of punctuation in a rulemaking. Some people may not agree to it completely, but they are not going to object to it. The goal is to get to the Board without anyone opposing the proposed rule as written.

Chairman Purdy asked if there were further questions from Board members. There were none. He asked if there were comments from the public. Mr. Lynn Tominaga made a brief comment.

➤ **MOTION:** Ms. Beth Elroy moved that the Idaho Board of Environmental Quality adopt as pending rules the Rules of Administrative Procedure Before The Board of Environmental Quality as presented in the final proposal under Docket 58-0123-1201 with the pending rules becoming final and effective upon the adjournment sine die of the First Regular Session of the Sixty-Second Idaho Legislature if approved by the Legislature.

➤ **SECOND:** Dr. Randy MacMillan.

VOICE VOTE: Motion carried unanimously.

AGENDA ITEM NO. 9: 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. 10: SET 2013 BOARD MEETING SCHEDULE

The 2013 Board meeting schedule was set as follows:

February 13 and 14, 2013
May 8 and 9, 2013
October 16 and 17, 2013
November 20 and 21, 2013

There was a discussion regarding tours and educational functions for presenting background information to the Board in order to help Board members better understand how regulations affect various entities in Idaho. The potential to hold Board meetings at different locations throughout the state was also discussed. The November 14, 2012 meeting was moved to December 13, 2012 to include a Micron Fab tour. Ms. Elroy will verify the date via email.

AGENDA ITEM NO. 5: RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO, DOCKET NO. 58-0101-1201 (PENDING RULE)

(RULEMAKING TO MAKE VARIOUS "HOUSEKEEPING" REVISIONS SUCH AS UPDATES FOR CONSISTENCY WITH FEDERAL REGULATIONS, CLARIFICATION, AND TYPOGRAPHICAL CORRECTIONS TO CERTAIN AIR QUALITY PERMITTING RULE SECTIONS, RELATED DEFINITIONS, AND THE TOXIC AIR POLLUTANT SECTIONS.)

Agenda Item No. 5 was revisited. Mr. Simon said that under the definition of "significant" on page 61, under Particulate Matter, subsection three (3), DEQ is fine with leaving the semicolons and inserting the word "or" to read:

Three (3): Ten (10) tons per year of direct PM_{2.5} emissions; or forty (40) tons per year of sulfur dioxide emissions; or forty (40) tons per year of nitrogen oxide emissions.

Mr. Simon said the federal rule lists only semicolons but the guidance and interpretation reads each pollutant. Placing the word "or" makes it clear and solves the issue.

Ms. Elroy agreed it would help. She additionally asked if when one is going through a PSD BACT analysis for particulate matter and triggers it for PM_{2.5}, does one just do PSD BACT analysis for PM_{2.5} or does one do it for particulate matter? Mr. Simon responded that it would be for PM_{2.5} because it is the direct pollutant.

Mr. McCreedy commented that he is also fine with the changes made.

- **MOTION:** Mr. John McCreedy 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 proposal under Docket No. 58-0101-1201, as further modified by the Board today, with the pending rules becoming final and effective upon the adjournment sine die of the First Regular Session of the Sixty-Second Idaho Legislature if approved by the Legislature.
 - **SECOND:** Ms. Beth Elroy.
- VOICE VOTE:** Motion carried unanimously.

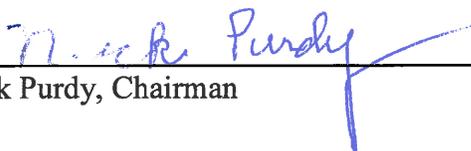
AGENDA ITEM NO. 11: ELECTION OF BOARD OFFICERS

- **MOTION:** Dr. Randy MacMillan moved to nominate the Board Officers for 2013 as follows:
 - Ms. Carol Mascareñas, Chairman
 - Mr. John McCreedy, Vice-Chairman
 - Mr. Kevin Boling, Secretary
 - **SECOND:** Mr. Kermit Kiebert.
- VOICE VOTE:** Motion carried unanimously.

AGENDA ITEM NO. 12: LOCAL REPORTS AND ITEMS BOARD MEMBERS MAY WISH TO PRESENT

Chairman Purdy asked if there were any other reports or items Board members wish to present. Director Fransen reminded us that Chairman Purdy would like to recognize Dr. Joan Cloonan. DEQ will handle this task. There were no other items to present.

THE MEETING ADJOURNED AT 11:59 A.M.



Nick Purdy, Chairman

Secretary



Rosie Alonzo, Assistant to the Board and Recorder