

MINUTES  
**HOUSE ENVIRONMENT, ENERGY, & TECHNOLOGY COMMITTEE**  
**HARTGEN SUBCOMMITTEE**  
Water Quality

**DATE:** Wednesday, January 18, 2012

**TIME:** 1:30 P.M.

**PLACE:** Room EW41

**MEMBERS:** Chairman Hartgen, Representatives Anderson, Vander Woude, Block, Gibbs, Nielsen, Thompson, Jaquet

**ABSENT/  
EXCUSED:** None.

**GUESTS:** Barry Burnell, Water Quality Division Administrator, Dept. of Environmental Quality (DEQ); Christine Riggs, Office of Attorney General; Jim Chandler, Chris Randolph, and Rich Hahn, Idaho Power Company; Camille Luna, Batt Associates; Sarah Higer and Albert Barker, Barker, Rosholt and Simpson; Brad Hunt, Office of Administrative Rules Control; Jason Kreizenbeck, Lobby Idaho; Lynn Tominaga, Idaho Ground Water Appropriators; Dale Atkinson, citizen.

**Chairman Hartgen** called the meeting to order at 1:31 p.m.

**DOCKET NO. 58-0102-1101:** **Barry Burnell**, Department of Environmental Quality (DEQ), regarding **Docket No. 58-0102-1101**, stated that the purpose of the rule was to remove the point source thermal treatment requirements and salmonid spawning temperature criteria so that the older standards would not be used in the National Pollution Discharge Elimination System discharge permits. He also stated that the DEQ board had approved this temporary rule on June 29, 2011. After DEQ submitted the temporary rule to the Environmental Protection Agency (EPA) Region 10 on July 20 and Oct 27 of last year, EPA approved the change in Site Specific Salmonid Spawning Temperature Criterion for the lower Boise River. Mr. Burnell remarked that the City of Boise supported the rule change.

In response to a question from the committee regarding stringency of the proposed rule, **Mr. Burnell** stated that the standards included in the proposed rule were no broader in scope, nor more stringent, than federal regulations and did not regulate an activity not regulated by the federal government. Additional committee concerns included the 13 degree Centigrade temperature standard for water coming into the Boise River from canals and treatment plants, and, also the value of flexibility in changing a site specific temperature. Mr. Burnell stated that the rule would not require change in canal water temperatures nor affect the compliance of the treatment plants. He explained that the current rule only allowed for one degree variance. If **Docket No. 58-0102-1101** is approved, the variance in water temperature in normal circumstances, which does not affect the spawning salmon during the fall and winter spawning seasons, would be more locally controlled.

**MOTION:** **Rep. Gibbs** made a motion to recommend approval of **Docket No. 58-0102-1101** to the full committee. **Motion carried by voice vote.**

**DOCKET NO.  
58-0102-1102:**

**Barry Burnell**, DEQ, presented **Docket No. 58-0102-1102**. He said that the purpose of the rule change was to update the water quality standards for temperature in the Snake River from Hells Canyon to the confluence with the Salmon River as a revision of the existing site specific temperature criterion. He also said additional Fall Chinook Salmon studies had been conducted that demonstrated successful spawning at higher water temperatures than specified in the water quality standards. Mr. Burnell also testified that the Snake River Fall Chinook Salmon population had demonstrated a significant recovery over the past 10 years. He noted that the rule change would alter 13 degrees Centigrade from October 23 to April 15 to 14.5 degrees Centigrade from November 7 to April 15. Mr. Burnell also stated that the Snake River users in the proposed area had been contacted and DEQ had received written and/or verbal comments from all concerned.

When asked if the rule were approved would this be DEQ's final request for a temperature criterion change, **Mr. Brunell** responded that current studies supported the temperature change and that future studies may encourage further modification. Mr. Brunell stated that the salmon growth could not be attributed to temperature change.

In response to a question, **Jim Chandler**, Idaho Power Company, verified the distance from Hells Canyon to the confluence with the Salmon River as 60 miles.

**Arthur Barker**, Attorney at Law representing Idaho Power, testified that Idaho Power had requested changes in the rule after scientific studies supported the change.

**MOTION:**

**Rep. Thompson** made a motion to recommend approval of **Docket No. 58-0102-1102** to the full committee. **Motion carried by voice vote.**

**DOCKET NO.  
58-0102-1103:**

**Barry Burnell**, DEQ, regarding **Docket No. 58-0102-1103** stated that the purpose of the rule was to implement **H 153** as enacted by the 2011 Legislature and combine **H 153** into the water quality standards. He also noted that the bill rejected sections of the anti-degradation rule. He stated that **H 153** in addition to replacing the rejected rule sections, put into statute that special resource waters should be evaluated in the same fashion as all other waters. Mr. Burnell remarked that the largeness of the rule was attributed to a cleanup section and an EPA recommended recreation approval section.

**Lynn Tominaga**, Idaho Ground Water Appropriators, was called on to respond to a concern from the committee that the rule follow the intent of the legislation. He indicated that he was present throughout the rule making negotiations and had been involved with water quality legislation for 25 years. He testified that the rule met the intent of **H 153**.

**MOTION:**

**Rep. Thompson** made a motion to recommend approval of **Docket No. 58-0102-1103** to the full committee. **Motion carried by voice vote.**

**DOCKET NO.  
58-0109-1101:**

**Barry Burnell**, DEQ, presented **Docket No. 58-0109-1101**. He stated that the purpose of the rule was to implement **H 206** as enacted by the 2011 Legislature. The Legislature transferred the responsibility and oversight of current and future poultry operations from DEQ to the Idaho State Department of Agriculture. The rule also removes references to poultry facilities from DEQ's "Rules Regulating Swine and Poultry Facilities."

In response to a question from the committee regarding why swine were left within the jurisdiction of DEQ and poultry was not, **Mr. Burnell** stated that DEQ was following the directive given by the Legislature. He remarked that large swine farms had been anticipated because of the 1995-96 Big Sky Farms proposals. At that time, the Legislature gave jurisdiction of swine to DEQ. He noted that since the change there had been no permits requested for swine operations. However, the poultry industry, had seen a sizable increase in activity and since the poultry industry had a desire to be supervised by the Department of Agriculture, they pursued that course of action. Mr. Burnell also noted that DEQ had received no public comment in opposition to the rule change.

**MOTION:** **Rep. Jaquet** made a motion to recommend approval of **Docket No. 58-0109-1101** to the full committee. **Motion carried by voice vote.**

**DOCKET NO. 58-0104-1001:** **Barry Burnell**, DEQ, presented **Docket No. 58-0104-1001**, He explained the primary changes to the Wastewater Grant Rules modified the priority rating criteria to match the loan priority rating criteria, brought greater consistency between companion loans/grants rules and reduced environmental documentation efforts. He noted that since DEQ hopes that a planning grant leads to a design and construction loan, it seemed logical that the two sets of rating criteria should complement one another. The rule change would provide grant applicants an early indication of how they rate on the DEQ loan priority lists. He also noted that the current rating criteria does not factor in compliance issues, planned sustainability efforts or integration of studies for possible pollutants.

In response to a committee question, **Mr. Burnell** explained that the words "green building practices" on page 219 of the Administrative Rules, Section 30, referred to those types of building practices that save money, save energy and create less waste water.

**MOTION:** **Rep. Jaquet** made a motion to recommend approval of **Docket No. 58-0104-1001** to the full committee. **Motion carried by voice vote.**

**DOCKET NO. 58-0112-1001:** **Barry Burnell**, DEQ, presented **Docket No. 58-0112-1001**. He explained that the purpose of the rule was to change the priority rating criteria to incorporate sustainability considerations, to achieve consistency with related loan and grant programs for cost eligibility issues, and to provide a detailed rule on how to apportion required loan subsidies.

In response to committee questions, **Mr. Brunell** explained disadvantaged loans and the principle of forgiveness. He also identified cities in Idaho that had secured disadvantaged loans and spoke to their success or failure in repaying the loans.

**MOTION:** **Rep. Jaquet** made a motion to recommend approval of **Docket No. 58-0112-1001** to the full committee. **Motion carried by voice vote.**

**DOCKET NO. 58-0120-1001:** **Barry Burnell**, DEQ, regarding **Docket No. 58-0120-1001** said that the primary changes to the Drinking Water Loan Rules adjusted the priority rating criteria to match the criteria by which the DEQ Drinking Water program evaluates system deficiencies and health. He also said that the rule brings greater consistency between the loan/grant rules. Mr. Burnell remarked that some of the current rating criteria had become outdated and unused. He explained that at the inception of the rule it was envisioned that requests for funding assistance would be supported by documented "health emergencies or "unreasonable risk to health". Since neither had been used, they were being deleted. However, DEQ retained and described public health hazard as a rating criteria; and sustainability efforts were incorporated to ensure compliance with emerging EPA requirements.

In response to a committee question regarding criteria for ranking loan applicants, **Mr. Brunell** stated that points were given to each category. He said that the criteria list assisted DEQ in judging which facility had the greatest need.

**MOTION:** **Rep. Thompson** made a motion to recommend approval of **Docket No. 58-0120-1001** to the full committee. **Motion carried by voice vote.**

**DOCKET NO. 58-0122-1001:** **Barry Burnell**, DEQ, presented **Docket No. 58-0122-1001**. He explained that the changes to the Drinking Water Grant Rules would modify the priority rating criteria to match the criteria by which the DEQ Drinking Water Program evaluates system deficiencies and health risk, to bring greater consistency between companion loans/grants rules and to reduce environmental documentation efforts. He noted that since DEQ hoped that a planning grant effort would lead to a design and construction loan it seemed logical that the two sets of rating criteria should complement one another. He also explained that the environmental information document preparation was made optional.

In response to a committee question, **Mr Burnell** explained that to obtain a grant, a community must send their completed list to the DEQ Board.

**MOTION:** **Rep. Gibbs** made a motion to recommend approval of **Docket No. 58-0122-1001** to the full committee. **Motion carried by voice vote.**

**ADJOURN:** There being no further business to come before the committee, the meeting adjourned at 3:02 p.m.

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Representative Stephen Hartgen  
Chair

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Jean Vance  
Secretary