MEMORANDUM

DATE: December 4, 2015
TO: Members of the Board of Environmental Quality
FROM: Doug Conde
RE: Process for the Appointment of Hearing Officers

On November 18, 2015, I presented to you the process DEQ currently uses to solicit and present hearing officer applicants for Board approval and the process used to select a hearing officer from the Board’s approved list to preside over a specific contested case. We also discussed ways of improving on that process, by giving the Board an opportunity to review and object to the selection of a hearing officer for a specific contested case. During that discussion, you requested that I set out the process in writing for your review prior to the December 10, 2015 Board meeting. This memorandum set forth the process to be used going forward for the appointment of hearing officers.

Process for Soliciting and Presenting Hearing Officers for Board Approval

The hearing coordinator maintains a list of board approved hearing officers. The list includes the location of the hearing officers, the types of cases they have each presided over, and the case names and docket numbers. The case names and docket numbers provide information regarding the year the petition was filed and the subject matter of the case. A copy of the list is attached. The current list of Board approved hearing officers, and the towns in which they reside, is posted on the Board of Environmental Quality web page.

When DEQ feels the need to add Hearing Officers to the list, for example when DEQ no longer has sufficient hearing officers available in Boise where most contested cases are heard, DEQ will run an advertisement in the Advocate (the Idaho State Bar Journal) or other appropriate publication. DEQ may choose to use another appropriate form of advertisement, such as the internet. Often, however, DEQ may receive unsolicited requests from lawyers to act as hearing officers.

Minimum qualifications for hearing officers include current license to practice law in the state of Idaho, at least five years legal experience, and civil or administrative trial experience. Experience in environmental law is preferable. These minimum qualifications were determined by the Board.

Attorneys interested in becoming a hearing officer contact the hearing coordinator. Prior to board consideration of a hearing officer applicant, the applicant is asked to provide a resume with references, a letter of recommendation, and a short writing sample. Board consideration of the application is set for the next available Board meeting. The applicant is asked to attend the Board meeting. The attorney general’s office may provide a recommendation to the Board regarding the hearing officer.
Process for Appointment of Hearing Officers to Preside Over Contested Cases

Once a petition for a contested case is filed, a hearing officer must be chosen from the Board approved list. (The contested case rules provide that the appointment is administered by the hearing coordinator.) Criteria for choosing a hearing officer from the Board approved list:

1) Location

The hearing coordinator will choose a hearing officer nearest the location of the facility that is the subject matter of the petition unless all parties agree that it would be more convenient to hold the contested case hearing in Boise. In that case, a Boise hearing officer is chosen for appointment.

2) Subject Matter of the Petition

The hearing coordinator will choose a hearing officer that is most familiar with the subject matter of the petition.

3) Public Hearing on the Permit that is the Subject of the Petition

If a public hearing was held regarding the issuance of a permit and conducted by a Board approved hearing officer, and that permit once issued is appealed through a contested case, the hearing coordinator will choose the hearing officer who handled the public hearing, unless he or she is in a location that is not the most convenient for the contested case hearing.

4) List Rotation

In the event that criteria 1 through 3 do not apply, the hearing coordinator will choose the hearing officer that is up next in the rotation.

Opportunity for Board Members to Reject the Hearing Coordinator’s Selection of Hearing Officer

Upon receipt of a petition for a contested case, the hearing coordinator will forward to each Board member a copy of the petition along with a cover letter. The letter will inform the Board that the petition has been filed and will include the name of the hearing officer selected for appointment, and the criteria under which the selection was made. The letter will also request that the Board inform the hearing coordinator by a certain date whether a Board member would like to set a meeting to discuss the appointment of the hearing officer or to discuss whether the Board, or one or more members of the Board, would like to hear the contested case. If the hearing coordinator does not hear from the Board by the date specified in the letter, the hearing coordinator will proceed with the appointment of the hearing officer named in the letter. A copy of the letter is attached.
### DEQ Hearing Officers
#### December 2015

<table>
<thead>
<tr>
<th>Cases Assigned</th>
<th>Hearing Officer</th>
<th>Status</th>
</tr>
</thead>
</table>
| 0115-03-17 (Young’s Septic Service) | Frederick F. Belzer  
Attorney at Law  
850 East Center  
P.O. Box 4947  
Pocatello, ID 83205  
(208) 234-7118  
Fax: (208) 234-7139  
belzerlaw@aol.com | Contract K093  
Contract start date 8/1/15  
Renew 6/16  
(expires 7/31/16)  
$135/hour |
| 0117-04-03 (Simplot Aberdeen WLAP) | Mark R. Petersen  
Snake River Law PLLC  
168 N. Main  
P.O. Box 4984  
Pocatello, ID 83205-4984  
Facsimile to 888-560-8785  
(208)406-9885  
mark@snakeriverlaw.com | Contract expires 12/31/15  
renewal in progress |
| 0103-07-02 (Sunnyside Park Utilities) | Heidi Fisher  
Child & Fisher  
212 S. 11th Street, Ste. #1  
Coeur d’Alene, ID 83814  
(208) 667-4571  
Fax: (208) 664-6648  
mailbox@childandfisher.com | Contract K076  
Contract start date 5/18/15  
Renew 2/16  
(expires 3/31/16)  
$135/hour |
| 0108-99-01,02,03 (Harbor View Estates/Gerlitz) | Richard P. Wallace  
Attorney at Law  
2370 N. Merritt Creek Loup #1  
Coeur d’Alene, ID 83814  
(208) 292-2691  
Fax: (208)292-2693  
rich@wallacelegal.com | Contract expires 12/31/15  
renewal in progress |
| 0101-02-01 (Potlatch) | Edwin L. Litteneker  
Attorney at Law  
P.O. Box 321  
Lewiston, ID 83501-0321  
Facsimile to (208)798-8387  
(208)746-0344  
ed@littenekerlaw.com | Contract K075  
contract start date 5/18/15  
Renew 2/16  
(expires 3/31/16)  
$135 per hour |
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<th>Cases Assigned</th>
<th>Hearing Officer</th>
<th>Status</th>
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<tr>
<td>0102-07-06 (Pristine Springs 401 certification)</td>
<td>Elaine Eberharter-Maki, Moore Smith Buxton &amp; Turke</td>
<td>Contract K086, contract start date 7/3/15, Renew 5/16, (expires 6/30/16), $135 per hour</td>
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<tr>
<td></td>
<td>950 W. Bannock St., Ste 520, Boise, ID 83702</td>
<td></td>
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<tr>
<td></td>
<td>Facsimile to: 331-1202, 331-1800, <a href="mailto:eem@msbtlaw.com">eem@msbtlaw.com</a></td>
<td></td>
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<tr>
<td>0102-08-02 (Micron Technology, Inc.)</td>
<td>Michael J. Kane, Michael Kane &amp; Associates, PLLC</td>
<td>Contract expires 12/31/15, renewal in progress</td>
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<tr>
<td></td>
<td>P.O. Box 2865, Boise, ID 83701-2865</td>
<td></td>
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<td>Facsimile to: 342-2323, 342-4545, <a href="mailto:mkane@ktlaw.net">mkane@ktlaw.net</a>, Tracey Presler, <a href="mailto:tpresler@ktlaw.net">tpresler@ktlaw.net</a></td>
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<tr>
<td>0101-12-05 (Freeman v DEQ)</td>
<td>Trent Marcus, Marcus, Christian &amp; Hardee, 737 N. 7th Street, Boise, ID 83702-5504</td>
<td>Contract K078, contract start date 5/18/15, Renew 2/16, (expires 3/31/16), $135 per hour</td>
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<td></td>
<td>Facsimile to: 342-3580, 342-3563, <a href="mailto:tmlaw@qwestoffice.net">tmlaw@qwestoffice.net</a></td>
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<td>0101-10-02 (McClaran v DEQ)</td>
<td>John C. Lynn, Attorney at Law, 776 E. Riverside Dr., Ste. 240, Eagle, ID 83616-6964</td>
<td>Contract K103, contract start date 9/1/15, Renew 7/16, (expires 8/31/16), $135 per hour</td>
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<td>0101-11-02 (Canyon County v DEQ)</td>
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<td>0101-11-04 (Freeman v DEQ)</td>
<td>David E. Wynkoop, Sherer &amp; Wynkoop, 730 N. Main Street, P.O. Box 31, Meridian, ID 83680-2604, 887-4800, Facsimile to 887-4865, <a href="mailto:Dwynkooplaw@gmail.com">Dwynkooplaw@gmail.com</a></td>
<td>Contract K087, contract start date 7/1/15, Renew 5/15, Expires 6/30/16</td>
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July 30, 2012

Board of Environmental Quality
1410 N. Hilton
Boise, ID 83706-1255

Hidden Hollow Energy LLC v DEQ, Docket No. 58-0101-12-02

Dear Members of the Board of Environmental Quality:

Enclosed is a copy of a Petition Initiating a Contested Case filed on July 24, 2012 and the Notice of Filing and Service of Petition. IDAPA 58.01.23.047 requires that the Board publish a legal notice upon receipt of a petition for contested case. Enclosed is a copy of the legal notice for newspaper publication.

By August 13, 2015 (10 days from mailing of this letter), I will appoint David Wynkoop as the hearing officer for this case if I have not received notice that a member of the Board requests the scheduling of a Board meeting to discuss the appointment of a different hearing officer or to discuss whether the Board, or one or more members of the Board, wish to hear the contested case in lieu of the proposed hearing officer.

I selected David Wynkoop to preside over this contested case because he is located in Boise, which is the location of the facility that is the subject matter of this petition, and he has not been appointed since his approval by the Board on May 20, 2015. The other criteria do not apply.

If you have any questions, or if I can be of any further assistance, you can contact me at (208)373-0418.

Sincerely,

Paula J. Wilson
Hearing Coordinator