

BEFORE THE BOARD OF ENVIRONMENTAL QUALITY

**IN RE: IDAHO CONSERVATION LEAGUE
PETITION FOR INITIATION OF
RULEMAKING**

) Docket No.: 0101-08-01
)
) **ORDER REGARDING PETITION**
) **FOR INITIATION OF**
) **RULEMAKING**

On April 11, 2008, The Idaho Conservation League ("ICL") filed a Petition for Initiation of Rulemaking, pursuant to Idaho Code § 67-5230 and IDAPA 58.01.23.800. The Petition requested that the Board immediately seek the adoption of a temporary rule and a related proposed rule that would amend the Rules for the Control of Air Pollution in Idaho to add a provision that would prohibit the issuance of a Permit to Construct or Tier II Operating Permit to any new facility that has the potential to emit more than five pounds per year of mercury or mercury-containing compounds or to any existing facility that seeks to increase its current potential to emit by more than five pounds per year of mercury or mercury-containing compounds. The Petition further requested that the Board initiate a negotiated rulemaking to solicit greater public comment and involvement in crafting such rules as are needed to develop and implement an Idaho State permitting process designed to limit and control mercury emissions from facilities operating within the State of Idaho.

The ICL Petition was reviewed by the Board at its April 25, 2008 meeting. The Board heard testimony from the Petitioner, the Department of Environmental Quality, the Environmental Protection Agency and representatives of the Idaho Association of Commerce & Industry, the Idaho Council on Industry and the Environment and the Idaho Mining Association. The Board also received and considered written comments and other information received before the April 25, 2008 meeting.

Based upon the above described testimony and information, the Board by a majority vote passed a motion to deny the ICL Petition. Board members Don Chisholm and Marti Calabretta voted against the motion, and Board member Kermit Kiebert was absent. The Board's denial is based upon the following reasons.

The Board is concerned with the levels of mercury in Idaho waters and the methyl mercury levels in Idaho fish tissue. The Board, however, denies the motion, because at this time:

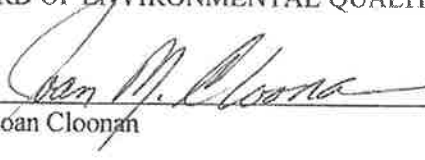
- a. there is a lack of information necessary to proceed with rulemaking;
- b. there is a need for further input from stakeholders before rulemaking is conducted;
- c. there are studies that are currently not completed, but will soon be completed and available for use in any rulemaking;
- d. there is a need to further analyze the connection, if any, between Idaho air sources and mercury levels in Idaho waters before proceeding with rulemaking;
- e. there is a need to identify the regulatory mechanism to achieve any needed reduction in mercury levels in Idaho waters before proceeding with rulemaking; and
- f. there is a need to further analyze the threat to public health and the environment from Idaho mercury sources before proceeding with rulemaking.

This denial of the petition is a final agency action. Pursuant to Idaho Code §§ 67-5230 and 67-5270 and IDAPA 58.01.23.800.02, any person aggrieved by this Order may seek review

of the Order by filing a petition for judicial review in District Court within twenty-eight (28) days of the date of this Order.

DATED THIS 1st day of May, 2008.

BOARD OF ENVIRONMENTAL QUALITY



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Donald J. Chisholm

Nick Purdy

Marti Calabretta

Craig D. Harlen

Dr. J. Randy MacMillan

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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of May, 2008, a true and correct copy of the **Order Regarding Petition for Initiation of Rulemaking** was served on the following:

Justin Hayes, Program Director
Idaho Conservation League
P.O. Box 844
Boise, ID 83701
First Class U.S. Mail



Paula J. Wilson
Hearing Coordinator