

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, January 17, 2022

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Vick, Vice Chairman Heider, Senators VanOrden (Bair), Patrick, Guthrie, Burtenshaw, Stennett, and Semmelroth

ABSENT/ EXCUSED: Senator Blair (Johnson)

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Vick** called the meeting of the Senate Resources and Environment Committee (Committee) to order at 1:36 p.m.

PASSED THE GAVEL: Chairman Vick then passed the gavel over to Vice Chairman Heider.

DOCKET NO. 58-0000-2100F **Introduction and Summary of Omnibus Fee Rule.** **Vice Chairman Heider** introduced **Kristin Ryan**, Deputy Director for the Department of Environmental Quality (DEQ). **Ms. Ryan** stated she is here today to ask for the Committee's approval of two dockets; **Docket No. 58-0000-2100F** and **Docket No. 58-0000-2100**. **Docket No 58-0000-2100F** includes all department regulations that have a fee component. The department's twelve fee rules begin on page 462 of the 2022 Pending Fee Rule Book. **Ms. Ryan** referred the Committee to DEQ's electronically provided document, "DEQ Rules Submitted for Review" (Attachment 1). This includes links to detailed documents used throughout the DEQ rules presentations. **Ms. Ryan** reviewed the seven Omnibus Fee Rules that have been previously submitted to and reviewed by the Idaho Legislature and have no revisions to present. These are: 58.01.06, Solid Waste Management Rules; 58.01.07, Rules Regulating Underground Storage Tank Systems; 58.01.08, Idaho Rules for Public Drinking Water Systems; 58.01.11, Ground Water Quality Rule; 58.01.12, Rules for Administration of Wastewater and Drinking Water Loan Funds; 58.01.13, Rules for Ore Processing by Cyanidation; and 58.01.14, Rules Governing Fees for Environmental Operating Permits, Licenses, and Inspection Services.

Ms. Ryan then stated there are five rules with revisions that will be explained to the Committee today. She explained one revision made updates to adoption by reference, three were amended because of Governor Little's **Executive Order 2020-01**, regarding zero-based regulation, and one was revised due to a concern expressed by a legislator last year. **Ms. Ryan** then introduced the next presenter, Tiffany Floyd.

**DOCKET NO.
58-0101-2100F**

Rules for the Control of Air Pollution in Idaho. **Tiffany Floyd** introduced herself as the Air Quality Division Administrator for DEQ. **Ms. Floyd** stated **Docket No. 58.0101.2100F** contains the Air Quality Division's annual incorporation by reference of Federal Regulations. These start on page 469 of the 2022 Pending Fee Rules Review Book. **Ms. Floyd** explained DEQ is the implementing authority for the Clean Air Act, and that an efficient way to implement new or updated federal regulations is to incorporate them by reference into state rules. This ensures DEQ's rules are up to date with federal changes and simplifies compliance for the regulated community. A general summary of changes is provided as a link on Attachment 1. This year's incorporation includes changes that were made to the Code of Federal Regulations as of July 1, 2021. Changes include updated compliance and reporting requirements that are now required to be electronic. Other changes include EPA promulgated rules approving several Idaho State Implementation Plan submittals required per the Clean Air Act, including the redesignation of the Cache Valley nonattainment area in Southeastern Idaho to attainment for particulate matter. **Ms. Floyd** stated there were also some minor updates to permitting requirements, including a minor update for Kraft Pulp Mills that clarified how to set operating limits for their process equipment and updated emissions reporting and source testing requirements. **Ms. Floyd** stated the most significant federal change was to the municipal solid waste landfill rules for landfills constructed on or before July 17, 2014. The main change was to the threshold for when a municipal landfill needs to install a gas collection system, which was lowered to 34 metric tons per year. Idaho has eight large landfills which would be impacted by this change, four of which already have a gas collection system, two that are planning to install one, and two that are tracking their thresholds to know if and when one will be required.

DISCUSSION:

Chairman Vick asked for an estimated cost of these gas collection systems, and **Ms. Floyd** responded that the cost is roughly a million dollars, depending on the size and the acreage of the facility. **Chairman Vick** then asked if some facilities use their gas collection system to generate revenue. **Ms. Floyd** responded that they do, and that some use electricity generated from their gas collection system to offset their operating costs. In response to two questions from **Senator Guthrie**, **Ms. Floyd** responded that there is no Federal money available to offset the cost of required gas collection systems, and there is no flexibility regarding the 34 metric tons requirement. **Ms. Floyd** added that there is flexibility regarding the design of the gas collection system. **Senator Guthrie** then asked if there is any ARPA (American Rescue Plan Act of 2021) money available to offset this cost. **Ms. Floyd** stated that she does not know of any, but they will look into this.

**DOCKET NO.
58-0105-2100F**

Rules and Standards Related to Hazardous Waste. **Vice Chairman Heider** introduced **Michael McCurdy**. **Mr. McCurdy** introduced himself as the Waste Management and Remediation Division Administrator for the Department of Environmental Quality. **Mr. McCurdy** reviewed the changes to **Docket No. 58-0105-2100F**. The rule text starts on page 660 of the 2022 Pending Fee Rules Review Book. A general summary of changes is provided as a link on Attachment 1. This rulemaking includes the adoption by reference of final federal hazardous waste regulations with effective dates through June 30, 2021, to ensure the state rules remain consistent with federal regulations. **Mr. McCurdy** reviewed how federal regulations are incorporated by reference into state rules. This rule incorporates Modernizing Ignitable Liquids Determination, which allows the use of more modern equipment and techniques for determining the ignitability of wastes. This rule may have an impact on Idaho facilities. Other than changes to the hazardous waste rule chapter to increase clarity and ease of use, there was one change to add a virtual format as an option for a public hearing.

DISCUSSION: **Senator Stennett** asked for clarification about the section related to ignitability of waste. **Mr. McCurdy** replied that the section had more to do with the classification of a waste as potentially hazardous waste. **Senator Guthrie** asked for confirmation that States can be more restrictive than the Federal Government by adopting a state rule, but cannot be less. **Mr. McCurdy** confirmed this is correct, but that the State of Idaho is generally not more restrictive than the Federal requirements. **Senator Guthrie** requested that any instances where DEQ suggested regulations are more stringent than the Federal government, that these be highlighted. **Mr. McCurdy** added that there are some areas under their jurisdiction, such as groundwater, that are not regulated by the Federal government, and these require evaluation as dictated by Idaho Code.

DOCKET NO. 58-0118-2100F **Idaho Land and Remediation Rules.** **Mr. McCurdy** then reviewed changes to **Docket No. 58-0118-2100F**. The rule text starts on page 921 of the 2022 Pending Fee Rules Review Book. A general summary of changes is provided as a link on Attachment 1. **Mr. McCurdy** explained that DEQ's Voluntary Cleanup Program was created in 1996 by the Idaho Land Remediation Act, which is Chapter 72 Title 39 of Idaho Code, to encourage innovation and cooperation between the state and local communities, and private properties. **Mr. McCurdy** noted that DEQ is proposing revisions to the Land Remediation Act this legislative session, although the revisions to the Land Remediation Rules in this Docket are not tied to the proposed revisions to the Land Remediation Act. **Mr. McCurdy** reviewed changes made to this rule packet that were primarily to remove outdated, duplicative, and unnecessary language. Changes do not change the meaning or content of the rule.

DISCUSSION: **Chairman Vick** asked for an example of when perceived risk of hazardous waste contamination might occur. **Mr. McCurdy** stated property owners might want to participate in the program prior to putting their property up for sale, and further elaborated on how the process might work. **Chairman Vick** asked why one would think there is a risk, but not know. **Mr. McCurdy** provided some examples. **Senator Stennett** asked about DEQ follow up for the voluntary containment program. **Mr. McCurdy** reviewed the steps of the agreement process for a certificate of completion, and DEQs level of involvement. **Senator Patrick** asked if DEQ could provide protection from liability. **Mr. McCurdy** responded that there are several ways that DEQ could help with liability, including the Brownfield's program and the Preliminary Assessment Program. Both are Federally funded. **Senator Guthrie** asked about issues related to property owners wanting to terminate their involvement in the program. **Mr. McCurdy** provided examples of ways DEQ attempts to have property owners complete the process.

DOCKET NO. 58-0109-2100F **Rules Regulating Swine Facilities.** **Vice Chairman Heider** then introduced **Dr. Mary Anne Nelson**. **Dr. Nelson** introduced herself as the Surface and Wastewater Division Administrator for DEQ. She introduced portions of **Docket No. 58-0109-2100F**, and **Docket No. 58-0125-2100F**. The rule text regarding swine facilities starts on page 846 of the 2022 Pending Fee Rules Review Book. A general summary of changes is provided as a link on Attachment 1. This fee rule chapter was drafted to replace the existing rule chapter, and includes the removal of obsolete, outdated, and unnecessary regulations and language. No changes to any standards necessary to protect public health or the environment were made to this chapter.

DISCUSSION: **Senator Stennett** asked how many facilities in Idaho contain 5000 plus swine, and **Dr. Nelson** responded, none.

DOCKET NO. 58-0125-2100F **Rules Regulating the Idaho Pollutant Discharge Elimination System Program.** **Dr. Nelson** continued, now presenting on **Docket No. 58-0125-2100F**. The corresponding rule text starts on page 927 of the 2022 Pending Fee Rules Review Book. These rules establish procedures and requirements for the issuance and maintenance of permits for facilities and activities for which a person is required by Idaho Code and the Clean Water Act to obtain authorization to discharge pollutants to waters of the United States. These permits are referred to in these rules as "IPDES permits" or "permits." **Dr. Nelson** stated DEQ was delegated authority for the IPDES program by the EPA in 2018. DEQ completed their phased implementation schedule to take full authority for this program and now has full delegated authority from the EPA. In response to concerns expressed during the last legislative session, DEQ did not carry forward Section 302.20, Water Quality Trading. This deletion is the only change to the IPDES rule chapter.

DOCKET NO. 58-0000-2100 **Introduction and Summary of Omnibus Rulemaking Non-Fee Rule Chapters.** **Vice Chairman Heider** then reintroduced **Kristin Ryan**. **Ms. Ryan** presented **Docket No. 58-0000-2100**. **Ms. Ryan** stated the seven non-fee rules that do not have changes: 58.01.02, Water Quality Standards; 58.01.03, Subsurface Sewage Disposal Rules and Rules for Cleaning of Septic Tanks; 58.01.10, Rules Regulating the Disposal of Radioactive Materials Not Regulated Under the Atomic Energy Act of 1954, As Amended; 58.01.16, Wastewater Rules; 58.01.17, Recycled Water Rules; 58.01.22 Rules for Administration of Planning Grants for Drinking Water and Wastewater; and 58.01.24, Standards and Procedures for Application of Risk Based Corrective Action at Petroleum Release Sites.

Ms. Ryan paused to introduce Jerry Henry, Administrator of the Drinking Water Protection and Finance Division, DEQ, and Jess Burne, Director, DEQ.

DOCKET NO. 58-0123-2100 **Contested Case Rules and Rules for Protection and Disclosure of Records.** **Ms. Ryan** continued with **Docket No. 58-0123-2100**, which begins on page 564 of the 2022 Pending Rules Review Book. This rule has been revised to remove obsolete, outdated and unnecessary rule language. It combines two chapters. Procedures from 58.01.21 that are already included in Idaho Code § 74.114 were eliminated, and remaining sections (016.02 and 017) were incorporated into 58.01.23, which was then renamed "Contested Case Rules and Rules for Protection and Disclosure of Records." Regulations describing the process for petitioning rule making and declaratory actions now only exist in 04.11.01, with the process for appealing department decisions remaining in 58.01.23.

PASSED THE GAVEL: Vice Chairman Heider turned the meeting back over to Chairman Vick.

DISCUSSION: **Senator Stennett** asked when the Committee should vote on the rules changes presented today. **Chairman Vick** responded that there are couple of discussions he needs to have prior to taking action on the rule changes presented today, but the Committee does need to approve each one of the presented Dockets.

ADJOURNED: There being no further business, Chairman Vick adjourned the meeting at 2:41 p.m.

Senator Vick
Chair

Shelly Johnson
Secretary