

Dear Senators LODGE, Broadsword & Werk, and
Representatives RAYBOULD, Harwood & Elaine Smith:

The Office of the Legislative Services, Research and Legislation, has received the enclosed rules of the Department of Environmental Quality: 58.01.01 - Rules for the Control of Air Pollution in Idaho (Docket #58-0101-0801).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative Services. The final date to call a meeting on the enclosed rules is no later than 3-28-08. If a meeting is called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis from Legislative Services. The final date to hold a meeting on the enclosed rules is 4-25-08.

_____The germane joint subcommittee may request a statement of economic impact with respect to a proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement, and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has been held.

To notify Research and Legislation, call 334-2475, or send a written request to the address or FAX number indicated on the memorandum enclosed.

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Health and Welfare Committee and the House Environment, Energy and Technology Committee

FROM: Research & Legislation Staff - Katharine Gerrity

DATE: March 13, 2008

SUBJECT: Department of Environmental Quality

The Department of Environmental Quality submits notice of temporary and proposed rule at IDAPA 58.01.01 - Rules for the Control of Air Pollution in Idaho. According to the Department, the rulemaking is proposed to implement the provisions of HB 557 wherein this Legislative session the Legislature approved a program for the open burning of crop residue to be administered by DEQ. The Department notes that field burning has been prohibited in Idaho since January 2007 as a result of a 9th Circuit Court of Appeals ruling. Following that ruling, an agreement was reached between representatives of farming organizations, Safe Air for Everyone, ISDA and IDEQ relating to a program for the open burning of crop residue. The Department conducted negotiated rulemaking in developing the rule. The Department also notes that adoption of the rule in itself will not authorize the open burning of crop residue in Idaho and that before open burning may be conducted, several actions must take place including development of a revised State Implementation Plan and approval of the plan by the EPA.

The Department also notes that the rule will have a one time initial start-up expense of \$186,700 as well as ongoing program costs estimated to be \$419,700 for a total impact of \$606,377 to the general fund for FY 2009. The Department indicates that future receipts remitted to the state for field burning shall be transferred to the general fund to help with ongoing program costs. The Department also states that the rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

We contacted the Department to inquire about several specific items in the rule that are not specifically set forth in the statute. In paragraph f of Subsection 621.01 there is reference to the proximity to sensitive populations (such as schools while in session, hospitals, etc.) being considered in determining whether to allow a burn. The Department noted that this factor was in

fact discussed and agreed to by the parties in the negotiated rulemaking process and was also included in the agreement reached between the parties following the court ruling. Similarly, the proximity to airports and roads reflected in Paragraphs g and h of Subsection 621.01 were agreed to and were actually included in the ISDA rules when the Department of Agriculture was in charge of smoke management. Training session provisions reflected in Paragraph f of Subsection 622.01 were also a carryover from the ISDA rules.

We have no further comments or suggestions based on our review of this rule. The temporary and proposed rule appears to be authorized by Sections 39-105 and 39-107, Idaho Code, and by HB 557 which has been signed by the Governor and which will be codified as Section 39-114, Idaho Code.

cc: Department of Environmental Quality

Paula J. Wilson

Martin Bauer

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY
58.01.01 - Rules for the Control of Air Pollution in Idaho
Docket No. 58-0101-0801
Notice of Rulemaking - Temporary and Proposed Rule

EFFECTIVE DATE: The temporary rule was adopted by the Board of Environmental Quality on March 12, 2008 with an effective date of April 2, 2008.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226(1), Idaho Code, notice is hereby given that the Board of Environmental Quality has adopted a temporary rule and the Department of Environmental Quality is commencing proposed rulemaking. This action is authorized by Sections 39-105 and 39-107, Idaho Code, and House Bill 557 (to be codified at Section 39-114, Idaho Code).

PUBLIC HEARING SCHEDULE: A public hearing concerning this proposed rulemaking will be held as follows:

May 2, 2008, 3:30 p.m.
Department of Environmental Quality
Conference Room C
1410 N. Hilton, Boise, Idaho

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208) 373-0418.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to implement the provisions of House Bill 557, wherein the 2008 Idaho Legislature approved a program for the open burning of crop residue to be administered by the Idaho Department of Environmental Quality (IDEQ) and repealed the Smoke Management and Crop Residue Disposal Act previously administered by the Idaho State Department of Agriculture (ISDA). Field burning has been prohibited in Idaho since January 2007 as a result of a 9th Circuit Court of Appeals ruling. In December 2007 representatives of farming organizations, Safe Air for Everyone (SAFE), ISDA, and IDEQ agreed on various components of a program for the open burning of crop residue. House Bill 557 and this rule address the central components of that agreement.

This rule is modeled after the Nez Perce smoke management program which prohibits field burning if air quality levels exceed or are expected to exceed 75% of any national ambient air quality standard. Farmers are required to obtain a notice of approval to burn, provide notice of proposed burns, and pay a registration fee based upon the number of acres to be burned. The rule contains provisions to ensure that the public has ready access to this information. In addition, IDEQ is required to conduct ongoing and annual reviews of the program.

Adoption of this temporary rule does not in itself authorize the open burning of crop residue in Idaho. Before burning can resume in Idaho, several actions must take place, including development of a revised State Implementation Plan (SIP) and approval of the SIP by the U.S. Environmental Protection Agency.

Farmers desiring to burn crop residue, members of the regulated community who may be subject to Idaho's air quality rules as well as special interest groups (including SAFE), ISDA, tribes, public officials, and members of the public who have an interest in the regulation of air emissions from sources in Idaho may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in October 2008 for adoption of a pending rule. The pending rule is expected to become final upon adjournment of the 2009 legislative session if adopted by the Board and approved by the Legislature.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in that the rules confers a benefit. Adoption of a temporary rule,

along with other required actions, will ensure protection of public health and the environment and will enable farmers to use the tool of burning within a program agreed upon by SAFE, ISDA, IDEQ, and other interested parties.

NEGOTIATED RULEMAKING: The text of the rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code Section 67-5220 and IDAPA 04.11.01.812-815. On February 6, 2008, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 08-2, page 31, and a preliminary draft rule was made available for public review. Meetings were held on February 12, 15, and 21, 2008. Several members of the public participated in this negotiated rulemaking process by attending the meetings and by submitting written comments.

IDAHO CODE § 67-5221(c) FISCAL IMPACT STATEMENT: The adoption of this rule will have one time initial start-up expenses of \$186,700 as well as ongoing program costs estimated to be \$419,700 for a total impact of \$606,377 to the general fund for FY2009. All future receipts remitted to the state for field burning under this rule shall be transferred to the general fund to help with ongoing program costs. At this time, it is unknown how much funding will come from this dedicated source annually.

IDAHO CODE § 39-107D STATEMENT: This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the negotiated rulemaking, contact Martin Bauer at (208)373-0440, martin.bauer@deq.idaho.gov.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before May 2, 2008.

DATED this 12th day of March, 2008.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton/Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

Temporary/Proposed Rule, Docket No. 58-0101-0801

600. Rules For Control Of Open Burning.

The purpose of Sections 600 through ~~617623~~ is to reduce the amount of emissions and minimize the impact of open burning to protect human health and the environment from air pollutants resulting from open burning as well as to reduce the visibility impairment in mandatory Class I Federal Areas in accordance with the regional haze long-term strategy referenced at Section 667.~~(3-30-07)(4-2-08)T~~

601. Fire Permits, Hazardous Materials, And Liability.

Compliance with the provisions of Sections 600 through ~~617623~~ does not exempt or excuse any person from complying with applicable laws and ordinances of other jurisdictions responsible for fire control or hazardous material disposal or from liability for damages or injuries which may result from open burning.~~(3-21-03)(4-2-08)T~~

602. Nonpreemption Of Other Jurisdictions.

The provisions of Sections 600 through ~~617623~~ are not intended to interfere with the rights of any city, county or other governmental entities or agencies to provide equal or more stringent control of open burning within their respective jurisdictions.~~(3-21-03)(4-2-08)T~~

603. General Restrictions.

01. Categories and Materials. No person shall allow, suffer, cause or permit any open burning operation unless it is a category of open burning set forth in Sections 600 through ~~617~~623 and the materials burned do not include any of the following:~~(3-21-03)(4-2-08)T~~

- a. Garbage, as defined in Section 006. (3-21-03)
- b. Dead animals, animal parts, or animal wastes (feces, feathers, litter, etc.) except as provided in Section 616. (3-21-03)
- c. Motor vehicles, parts, or any materials resulting from a salvage operation. (3-21-03)
- d. Tires or other rubber materials or products. (3-21-03)
- e. Plastics. (3-21-03)
- f. Asphalt or composition roofing or any other asphaltic material or product. (3-21-03)
- g. Tar, tar paper, waste or heavy petroleum products, or paints. (3-21-03)
- h. Lumber or timbers treated with preservatives. (3-21-03)
- i. Trade waste, as defined in Section 006, except as specifically allowed under Sections 600 through ~~617~~623. ~~(3-21-03)(4-2-08)T~~
- j. Insulated wire. (3-21-03)
- k. Pathogenic wastes. (3-21-03)
- l. Hazardous wastes. (5-1-94)

02. Air Pollution Episodes. No person shall allow, suffer, cause or permit any open burning to be initiated during any stage of an air pollution episode declared by the Department in accordance with Sections 550, through 562. (3-21-03)

03. Emergency Authority. In accordance with Title 39, Chapter 1, Idaho Code, the Department has the authority to require immediate abatement of any open burning in cases of emergency requiring immediate action to protect human health or safety.(3-21-03)

604. -- 605. (Reserved).

606. Categories Of Allowable Burning.

The purpose of Sections 606 through ~~617~~623 is to establish categories of open burning that are allowed when done according to prescribed conditions. Unless specifically exempted each category in Sections 606 through ~~617~~623 is subject to all of the provisions of Sections 600 through 605.~~(3-21-03)(4-2-08)T~~

(Break in continuity of sections)

617. Crop Residue .

The open burning of crop residue on fields where the crops were grown is an allowable form of open burning if conducted in accordance with the Smoke Management and Crop Residue Disposal Act, Chapter 48, Title 22, Section 39-114, Idaho Code, and the rules promulgated pursuant thereto, IDAPA 02.06.16, "Crop Residue Disposal Rules." Sections 618 through 623 of these rules.~~(3-21-03)(4-2-08)T~~

618. Permit By Rule.

01. General Requirements. All persons shall be deemed to have a permit by rule if they comply with

all the provisions of Sections 618 through 623. No person shall conduct an open burn of crop residue without obtaining the applicable permit by rule. The permit by rule does not relieve the applicant from obtaining all other required permits and approvals required by other state and local fire agencies or permitting authorities.(4-2-08)T

02. Forms. The Department shall provide the appropriate forms to complete the permit by rule. Forms may be available at the Department offices or on the Department website.(4-2-08)T

619. REGISTRATION FOR PERMIT BY RULE.

Any person applying to burn crop residue shall annually provide the following registration information to the Department at least thirty (30) days prior to the date the applicant proposes to burn:(4-2-08)T

01. Location of Property. Street address of the property upon which the proposed burning of crop residue will occur or, if there is no street address of the property, the legal description of the property using longitude and latitude coordinates or township, range and section for the Idaho meridian;(4-2-08)T

02. Applicant Information. Name, mailing address, and telephone number of the applicant, and the person who will be responsible for conducting the proposed burning of crop residue and the portable form of communication referenced in Subsection 622.01.c. of this rule;(4-2-08)T

03. Plot Plan. A plot plan showing the location of each proposed crop residue burning area in relation to the property lines and indicating the distances and directions of the nearest residential, public, and commercial properties, and roads;(4-2-08)T

04. Type, Acreage and Fuel Characteristics of Crop Residue Proposed to be Burned. The crop type, area over which burning will be conducted (acres), and other fuel characteristics;(4-2-08)T

05. Preventive Measures. A description of the measures that will be taken to prevent escaped burns or withhold additional material such that the fire burns down, including but not limited to the availability of water and plowed firebreaks; and(4-2-08)T

06. Date of Burning. The requested date(s) when the proposed crop residue burning would be conducted or the proposed date the field will be available to be burned.(4-2-08)T

620. REGISTRATION FEE.

01. Payment of Fee. The permit by rule registration fee set out in Section 39-114, Idaho Code, shall be paid in its entirety at least seven (7) days prior to the proposed burn date. The permit by rule registration form and fee should be sent to:

Crop Residue Burning Registration Fees
Fiscal Office
Idaho Department of Environmental Quality
1410 N. Hilton, Boise, ID 83706-1255(4-2-08)T

02. Effect of Payment. Payment of the registration fee does not imply authorization or approval to burn. (4-2-08)T

621. BURN DETERMINATION.

01. Burn Approval Criteria. The Department shall develop a Crop Residue Operating Guide to use in assisting in the determination of burn approvals. The permittee shall obtain initial approval from the Department for the proposed burn at least twelve (12) hours in advance of the burn. The permittee shall confirm, with the Department, the approval the morning of the proposed burn. The Department may shorten this time frame if meteorological or other applicable conditions change that will impact the air quality during the proposed burn period. To approve a permittee's request to burn, the Department must determine that ambient air quality levels do not exceed

seventy-five percent (75%) of the level of any national ambient air quality standards on any day and are not projected to exceed such level over the next twenty-four (24) hours, and ambient air quality levels have not reached, and are not forecasted to reach and persist at, eighty percent (80%) of the one (1) hour action criteria for particulate matter under Section 556 of these rules. In making this determination, the Department shall consider the following:(4-2-08)T

- a. **Expected Emissions.** Expected emissions from all burns proposed for the same dates; (4-2-08)T
- b. **Proximity of Other Burns.** The proximity of other burns and other potential emission sources within the area to be affected by the proposed burn;(4-2-08)T
- c. **Moisture Content.** Moisture content of the material to be burned; (4-2-08)T
- d. **Acreage, Crop Type, and Fuel Characteristics.** Acreage, crop type, and fuel characteristics to be burned; (4-2-08)T
- e. **Meteorological Conditions.** Meteorological conditions; (4-2-08)T
- f. **Proximity to Institutions with Sensitive Populations.** The proximity of the burn to institutions with sensitive populations, including public schools while in session; hospitals; residential health care facilities for children, the elderly or infirm; and other institutions with sensitive populations as approved by the Department. The Department shall not authorize a burn if conditions are such that institutions with sensitive populations will be adversely impacted or when the plume is predicted to impact such institutions;(4-2-08)T
- g. **Proximity to Public Roadways.** Proximity to public roadways; (4-2-08)T
- h. **Proximity to Airports.** Proximity to airports; and (4-2-08)T
- i. **Other Relevant Factors.** Any other factors relevant to preventing exceedances of the air quality concentrations of Section 621.(4-2-08)T

02. **Notification of Approval.** If the Department approves the burn, then it will post on its website written notification of the approval and any specific conditions under which the burn is approved. Special conditions may include, but are not limited to:(4-2-08)T

- a. Conditions for burns near institutions with sensitive populations; (4-2-08)T
- b. The requirement to withhold additional material such that the fire burns down if the Department determines pollutant concentrations reach the levels in Subsection 621.01 of this rule;(4-2-08)T
- c. Conditions to ensure the burn does not create a hazard for travel on a public roadway; and (4-2-08)T
- d. The requirement to consult with the Department to determine actions to be taken if conditions at the burn site fail to satisfy the conditions specified in the notice of approval to burn.(4-2-08)T

622. GENERAL PROVISIONS.

01. **Burn Provisions.** All persons in Idaho intending to dispose of crop residue through burning shall abide by the following provisions:(4-2-08)T

- a. **Burning Prohibitions.** Burning of crop residue shall not be conducted on weekends, federal or state holidays, or after sunset or before sunrise;(4-2-08)T
- b. **Designated Burn Day.** Burning of crop residue shall not be conducted unless the Department has designated that day a burn day and the permittee has received individual approval specifying the conditions under which the burn may be conducted;(4-2-08)T

c. Portable Form of Communication. The person conducting the burning must have on their possession a portable form of communication such as a cellular phone or radio of compatible frequency with the Department in order to receive burn approval information or information that might require measures to withhold additional material such that the fire burns down;(4-2-08)T

d. Location of Field Burning. Open burning of crop residue shall be conducted in the field where it was generated;(4-2-08)T

e. Limitations on Burning. When required by the conditions of the notice of approval to burn, the permittee burning in proximity to institutions with sensitive populations shall immediately extinguish the fire or withhold additional material such that the fire burns down, unless the Department determines that the burn will not have an adverse impact on such institutions;(4-2-08)T

f. Training Session. All persons intending to burn crop residue shall attend a crop residue burning training session provided by the Idaho Department of Environmental Quality or the Idaho State Department of Agriculture and shall attend a crop residue disposal refresher training session every five (5) years;(4-2-08)T

g. Air Stagnation or Degraded Air Quality. All field burning shall be prohibited when the Department issues an air quality forecast and caution, alert, warning or emergency as identified in Section 552 of these rules;(4-2-08)T

h. Allowable Forms of Open Burning. The use of reburn machines, propane flamers, or other portable devices to ignite or reignite a field for the purposes of crop residue burning shall be considered an allowable form of open burning. Tires and other restricted material described in Subsection 603.01, of this rule, are not allowed for ignition of fields; (4-2-08)T

i. Additional Burn Permits. All persons intending to burn crop residue shall obtain any additional applicable permits from federal, state or local fire control authorities prior to receiving approval from the Department to burn crop residue; and(4-2-08)T

j. Reporting to the Department. All persons burning crop residue shall report to the Department the date burning was conducted, the actual number and location of acres burned, and other information as required by the Department. The Department may restrict further burning by a permittee until completed burns are reported. (4-2-08)T

02. Annual Report. The Department shall develop an annual report that shall include, at a minimum, an analysis of the causes of each exceedance of a limitation in Section 621, if any, and an assessment of the circumstances associated with any reported endangerment to human health associated with a burn. The report shall include any proposed revisions to these rules or the Crop Residue Operating Guide deemed necessary to prevent future exceedances.(4-2-08)T

03. Advisory Committee. The Department will assemble an advisory committee consisting of representatives from environmental organizations, farming organizations, health organizations, tribal organizations, the Idaho State Department of Agriculture, the Idaho Department of Environmental Quality, and others to discuss open burning of crop residue issues.(4-2-08)T

623. PUBLIC NOTIFICATION

01. Designation of Burn Days. The Director or his designee shall designate for a given county or airshed within a county burn or no burn days.(4-2-08)T

02. Posting on Website. The Department shall post daily on its website: (4-2-08)T

a. Whether a given day is a burn or no burn day; (4-2-08)T

b. The location and number of acres permitted to be burned; (4-2-08)T

- c. Meteorological conditions and any real time ambient air quality monitoring data; and (4-2-08)T
- d. A toll free number to receive requests for information. (4-2-08)T

03. E-Mail Update Service. The Department shall provide an opportunity for interested persons to sign up to receive automatic e-mail updates for information regarding the open burning of crop residue.(4-2-08)T

~~618.~~— 624. (Reserved).

625. Visible Emissions.

A person shall not discharge any air pollutant into the atmosphere from any point of emission for a period or periods aggregating more than three (3) minutes in any sixty (60) minute period which is greater than twenty percent (20%) opacity as determined by this section.(4-5-00)

- 01. Exemptions.** The provisions of this section shall not apply to: (4-5-00)
 - a. Kraft Process Lime Kilns, if operating prior to January 24, 1969; or (5-1-94)
 - b. Carbon Monoxide Flare Pits on Elemental Phosphorous Furnaces, if operating prior to January 24, 1969; or (5-1-94)
 - c. Liquid Phosphorous Loading Operations, if operating prior to January 24, 1969; or (5-1-94)
 - d. Wigwam Burners; or (5-1-94)
 - e. Kraft Process Recovery Furnaces. (5-1-94)
 - f. Calcining Operations Utilizing an Electrostatic Precipitator to Control Emissions, if operating prior to January 24, 1969.(5-1-94)

02. Standards for Exempted Sources. Except as provided in Section 626, for sources exempted from the provisions of this section, a person shall not discharge into the atmosphere from any point of emission, for any air pollutant for a period or periods aggregating more than three (3) minutes in any sixty (60) minute period which is greater than forty percent (40%) opacity as determined by this section.(4-5-00)

03. Exception. The provisions of this section shall not apply when the presence of uncombined water, nitrogen oxides and/or chlorine gas are the only reason(s) for the failure of the emission to comply with the requirements of this rule.(4-5-00)

04. Test Methods and Procedures. The appropriate test method under this section shall be EPA Method 9 (contained in 40 CFR Part 60) with the method of calculating opacity exceedances altered as follows: (4-5-00)

a. Opacity evaluations shall be conducted using forms available from the Department or similar forms approved by the Department.(4-5-00)

b. Opacity shall be determined by counting the number of readings in excess of the percent opacity limitation, dividing this number by four (4) (each reading is deemed to represent fifteen (15) seconds) to find the number of minutes in excess of the percent opacity limitation. This method is described in the Procedures Manual for Air Pollution Control, Section II (Evaluation of Visible Emissions Manual), September 1986.(4-5-00)

c. Sources subject to New Source Performance Standards must calculate opacity as detailed above and as specified in 40 CFR Part 60.

05. Applicability. Section 625 shall not apply to the open burning of crop residue. (4-2-08)T