

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Monday, January 23, 2012

TIME: 3:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, Smyser, Heider, Vick, Nuxoll, Bock and Schmidt

**ABSENT/
EXCUSED:**

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.

MINUTES: **Chairman Lodge** called the meeting to order at 3:00 p.m., welcoming all in attendance.

RS 20867 **Allowing the Department of Health and Welfare to disclose information vital to the health and well-being of children who are under the jurisdiction of child protective services. Senator Tim Corder**, District 22, stated that this legislation will allow the Department of Health & Welfare (Department) to disclose information about children who are under the jurisdiction of child protective services. Under current law, information vital to the health and well being of children, even medical information, routinely is not shared, and in many cases may not be shared, from one foster parent to another or by other decision makers. Females removed from a home where abuse has occurred from male siblings might well be placed in a home where males reside and the foster parent is never told. He stated this legislation will allow the Department to better define, in rule, the information that will be disclosed and made available to foster parents, adoptive parents, guardians, and other legally responsible parties. **Senator Corder** requested the Committee send **RS 20867** to print.

Senator Bock asked if we are expanding the authority of Health & Welfare beyond what is appropriate in giving them free license to make rules that might not be authorized by statute. **Senator Corder** responded it is his belief that this gives the Department the license to write more rules, but not the liberty to expand their authority. They will still have to come back to this Committee with every rule they write. The statutory authority is to protect children and right now the rules we have are not allowing them to do that in a way that is required today. **Senator Vick** inquired why the added language states "unless otherwise provided by agency rule," rather than "unless otherwise provided by law." **Senator Corder** advised that "law" could have been used, but this way gives the Department a bit more flexibility to adapt as conditions change and every time they make a change in rule the Committee will see it. He stated it would be his preference to allow the Department to make those changes in rule.

MOTION: **Vice Chairman Broadsword** moved, seconded by **Senator Smyser**, to send **RS 20867** to print. The motion carried by **voice vote**.

Vice Chairman Broadsword commented that a few technicality questions need to be answered when the bill comes back to the Committee, but it makes common sense that the information should follow the child.

Chairman Lodge then passed the gavel over to **Vice Chairman Broadsword** to continue with rules review.

Vice Chairman Broadsword acknowledged **Toni Hardesty**, Director of the Department of Environmental Quality (DEQ), who advised that due to a jury duty call, **John Brueck**, Hazardous Waste Regulation and Policy Coordinator, Department of Environmental Quality, will present **Docket No. 58-0105-1101** in place of **Orville Green**.

**DOCKET NO.
58-0105-1101**

Rules Relating to Standards for Hazardous Waste (Pending). **Mr. Brueck** advised that this proposed rule updates the federal regulations incorporated by reference to include those revised as of July 11, 2011. This is a routine annual procedure that DEQ performs to satisfy consistency and stringency requirements of the Idaho Hazardous Waste Management Act and is necessary to maintain program primacy.

Between July 1, 2010 and June 30, 2011, two final federal hazardous waste regulations were published in the Federal Register that are proposed for adoption by reference. One of these rules involves removing saccharin and its salts from the lists of hazardous constituents and commercial chemical products which are hazardous when discarded. This change is in response to a petition filed by the Calorie Control Council. Key public health agencies and the EPA conducted a review concerning the carcinogenic and other potential toxicological effects of saccharin. As a result of the review, the EPA granted the petition to remove saccharin and its salts from the lists contained in the federal regulations.

The second rule change involves technical corrections to the alternative set of hazardous waste generator regulations that may be implemented by academic laboratories under certain conditions. Other corrections in the docket are housekeeping changes only. **Mr. Brueck** requested these rules be approved by the Committee.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see Attachment #1).

MOTION:

Senator Schmidt moved, seconded by **Chairman Lodge**, to adopt **Docket 58-0105-1101**. The motion carried by **voice vote**.

**DOCKET NO.
58-0104-1001**

Rules relating to Administration of Wastewater Treatment Facility Grants - Revise the priority rating criteria to closely match the Clean Water State Revolving Fund loan criteria, address the need to reduce the obligation to conduct an environmental study in those cases in which a grant recipient will not immediately pursue federal aid for construction, and update the cost eligibility criteria to achieve consistency (Pending). **Barry Burnell**, Water Quality Division Administrator, DEQ, advised that this docket and the three following dockets he is presenting are all related and a part of DEQ's loan and grant program. This update is proposed to achieve rating criteria consistent with the Clean Water State Revolving Fund (SRF) loan criteria and to facilitate compliance with new Federal SRF regulations. The changes proposed are so that if one is going through a grant process and receives a grant they will have an indication of how the project will rate on the Department's loan criteria. **Mr. Burnell** requested that the Committee adopt **Docket No. 58-0104-1001**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see Attachment #2).

Senator Darrington asked if in general these are revolving loan funds. He commented that a few years ago these funds were able to service the needs of the communities within a reasonable period of time and asked if that was still the case. **Mr. Burnell** responded that they are revolving loan funds, however the requests for funds now outstrips DEQ's capability to provide loans to communities and about half of the requests for low interest loans are turned away. He stated the community

systems are ranked and rated according to condition and the worst systems are the first ones to get loan funds. **Vice Chairman Broadsword** noted that engineering reports have been moved to the planning documents. **Mr. Burnell** indicated that is correct and that the planning documents give more flexibility to include engineering reports, preliminary engineering reports, or facility plans, so all four rules include a more generic description of what the planning document is so it can cover those three types of documents.

Vice Chairman Broadsword inquired if the following three rules mirror this rule. **Mr. Burnell** responded that the two grant rules match each other and the two loan rules match each other and then both the grant and loan rules cross each other on the grading criteria, so there is a high degree of similarity between all four rules. **Senator Schmidt** asked if the definition used for "sustainability" comes from the federal definition. **Mr. Burnell** advised that sustainability is a requirement in the federal capitalization grant that DEQ receives. He stated that the definition in this rule is DEQ's, but does include components that are part of the federal requirements for sustainability such as life of capital assets, green building practices and other environmental and innovative approaches. Those are all various components of sustainability so DEQ matched that in its definition.

Senator Schmidt commented that he had read all four of these related dockets, that they are similar, and the definition changes are similar. He asked if the Committee would entertain a motion to approve all four dockets. **Vice Chairman Broadsword** indicated that would be appropriate.

**DOCKET NO.
58-0112-1001**

Rules relating to Administration of Water Pollution Control Loans - Revisions for consistency with the recent changes to the Clean Water State Revolving Fund (Pending). **Mr. Burnell** noted the changes to **Docket No. 58-0112-1001** make the requirement to produce an environmental study as part of a planning document optional, and cost eligibility criteria have been updated to achieve consistency. He advised the change to make the environmental study optional will reduce costs for grant recipients in their preparation of facility planning studies.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see Attachment #3).

**DOCKET NO.
58-0120-1001**

Rules relating to Administration of Drinking Water Loan Program - Revisions for consistency with the recent changes to the Drinking Water State Revolving Fund (Pending).

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see Attachment #4).

**DOCKET NO.
58-0122-1001**

Rules relating to Administration of Planning Grants for Public Drinking Water Facilities - Revise the priority rating criteria to closely match the Drinking Water State Revolving Fund loan criteria, address the need to reduce the obligation to conduct an environmental study in those cases in which a grant recipient will not immediately pursue federal aid for construction, and update cost eligibility criteria to achieve consistency (Pending).

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see Attachment #5).

MOTION:

Senator Schmidt moved, seconded by **Senator Darrington**, to adopt **Docket Nos. 58-0104-1001, 58-0112-1001, 58-0120-1001, and 58-0122-1001**. The motion carried by **voice vote**.

**DOCKET NO.
58-0101-1001**

Rules relating to the Control of Air Pollution in Idaho (Pending). **Martin Bauer**, Air Quality Administrator for the DEQ, stated this rule is an amendment to the crop residue burning rules. He provided a brief history of crop residue burning program in Idaho and indicated this rule streamlines and establishes the conditions under which a permit by rule can be issued to a farmer or burner for either propane flaming, or spot and agricultural baled burns. **Mr. Bauer** requested **Docket No. 58-0101-1001** be approved by the Committee.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see Attachment #6).

In response to questions from **Senator Schmidt**, **Mr. Bauer** advised that DEQ anticipates approval by the EPA as this rule is based on what other states are already doing. He stated that the burn time of a bale is cut substantially by the requirement that the bale be spread out. **Senator Vick** asked if this is an area where the state of Idaho has primacy, and if so, what is the advantage if everything still has to be approved by EPA. **Mr. Bauer** explained that state primacy gives DEQ the flexibility to handle the program locally. Although EPA approval is necessary so that everyone, including the farmers and the public are protected, burn programs are handled through the state office. If EPA were to run this program, everything would have to be done through EPA in Seattle.

MOTION:

Senator Darrington moved, seconded by **Chairman Lodge**, to adopt **Docket 58-0101-1001**. The motion carried by **voice vote**.

**DOCKET NO.
58-0101-1003**

Rules relating to the Control of Air Pollution in Idaho (Pending). **Mr. Bauer** stated that the purpose of this rule is to streamline Idaho's Rules for Control of Kraft Pulp Mills by removing requirements that are either obsolete or covered by existing federal rules and by clarifying reporting requirements. **Mr. Bauer** requested **Docket No. 58-0101-1003** be approved by the Committee.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see Attachment #7).

MOTION:

Chairman Lodge, moved, seconded by **Senator Heider**, to adopt **Docket No. 58-0101-1003**. The motion carried by **voice vote**.

**DOCKET NO.
58-0101-1101**

Rules relating to the Control of Air Pollution in Idaho (Pending). **Mr. Bauer** stated that the purpose of this rule is to incorporate by reference the final rule for Prevention of Significant Deterioration (PSD) for Particulate Matter Less than 2.5 Micrometers (PM_{2.5} Rule) adopted by EPA. He advised that this rule basically applies to industrial facilities that emit large quantities of PM_{2.5} or PM_{fine} and addresses how permits are to be written and analyzed. **Mr. Bauer** requested **Docket No. 58-0101-1101** be approved by the Committee.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see Attachment #8).

MOTION:

Senator Heider moved, seconded by **Senator Schmidt**, to adopt **Docket 58-0101-1101**. The motion carried by **voice vote**.

**DOCKET NO.
58-0101-1102**

Rules relating to the Control of Air Pollution in Idaho (Pending). **Mr. Bauer** testified that this proposed rule change is a repeal of the electric generating unit construction prohibition that was adopted in 2007. He provided a history of the mercury emission rules and legislation and an overview of the need for this rule. **Mr. Bauer** requested **Docket No. 58-0101-1102** be approved by the Committee.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see Attachment #9).

In response to questions and comments from **Senator Darrington**, **Mr. Bauer** agreed that with the repeal contained in this rule it will be possible to site a coal fired plant under these rules. He also discussed the coal gasification plant which was proposed near American Falls, noting that gasification is a different proposal and a different method than the coal fired generating plant. He stated that the intent of that plant was to actually create diesel from coal and it would not even be generating power. **Senator Darrington** further commented that he felt the legislature reacted to emotion when they put the two year moratorium on coal fired plants and it seems like the actions of the DEQ Board and changes in the rules have facilitated a reasonable approach to what can be accommodated should the request be there. **Mr. Bauer** agreed with that statement.

MOTION: **Senator Nuxoll** moved, seconded by **Senator Heider**, to adopt **Docket No. 58-0101-1102**. The motion carried by **voice vote**.

DOCKET NO. 58-0101-1103 **Rules relating to the Control of Air Pollution in Idaho (Pending).** **Mr. Bauer** stated that this rule is the DEQ's annual routine incorporation by reference of all federal changes and appropriate regulations into Idaho's air quality rules. This rule is needed to ensure that Idaho's air quality program maintains consistency with the federal regulations. **Mr. Bauer** requested **Docket No. 58-0101-1103** be approved by the Committee.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see Attachment #10).

Senator Darrington commented that he is a big fan of primacy because we must live by the federal rules whether we administer the program or they administer the program. If we administer the program we have consistency and oversight on an ongoing basis and it is much to our advantage. He stated we do not have any options with regard to whether or not to adopt the federal changes.

MOTION: **Senator Darrington** moved, seconded by **Senator Schmidt**, to adopt **Docket No. 58-0101-1103**. The motion carried by **voice vote**.

Vice Chairman Broadsword returned the gavel to **Chairman Lodge**, who adjourned the meeting at 4:00 p.m.

Senator Lodge
Chairman

Lois Bencken
Secretary

Diana Page
Assistant Secretary