

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Monday, January 14, 2013

TIME: 3:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Heider, Vice Chairman Nuxoll, Senators Lodge, Hagedorn, Guthrie, Martin, Lakey, Bock, 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.

CONVENED: **Chairman Heider** convened the meeting at 3:05 p.m.

Chairman Heider welcomed the committee and said it will be discussing Department of Environmental Quality (DEQ) rules. **Chairman Heider** said committee members access the rules on their computers and **Vice Chairman Nuxoll** will be explaining the rules.

PASSING OF GAVEL: **Chairman Heider** passed the gavel to **Vice Chairman Nuxoll** to begin the rules process.

Vice Chairman Nuxoll said a temporary rule is such that if the governor finds that the temporary adoption of the rule by the agency board or the director protects – so it would have to protect the public health safety or welfare - or complies with deadlines governing the law or federal programs or confers a benefit then the agency may proceed with temporary rulemaking to implement the rule immediately. A temporary rule may become effective immediately upon adoption by the board, the agency board or the director. Once the temporary rule is adopted, the agency is required to publish a notice and the text of the temporary rule in their administrative bulletin. The rule expires upon conclusion of the next regular legislative session. So, it's just a temporary rule and only lasts for awhile depending on whether the governor permits it. **Vice Chairman Nuxoll** said the temporary rule is reviewed by the committees and can be extended as a temporary rule by concurrent resolution. In order for a temporary rule to become a final rule, the rule must go through the regular rulemaking process to be adopted by the agency as a pending rule with negotiated rule making and notices, then approved by the legislature.

Vice Chairman Nuxoll said a pending rule is a rule that has been adopted by an agency due to authority granted to the agency by the legislature, by a law that the legislature passed, by complying with federal requirements to keep up with the federal laws, a court decision, a clarification, new terminology, new practices or clean-up. It follows under the regular rulemaking process and remains subject to legislative review before becoming final and effective. The review is to make sure that it's compliant to the law. **Vice Chairman Nuxoll** said that is what the committee will be doing in this review, looking at the rules that come and making sure that they're compliant with what the legislature intended. Once the pending rule is adopted by the agency, the agency requires a public notice of the pending rule. A pending rule must be submitted to the committees for a review before it can become final and effective, and can be rejected only if both the House and Senate

agree to reject the rule by passing a concurrent resolution. However, if one body approves the rule then it's in effect. **Vice Chairman Nuxoll** said sometimes in a situation in which the committee has a rule that it feels isn't quite right, it will be sent back to the agency for more work. If one wants to reject a section of the rule a motion must be made, but you can't just reject words, change words or add words - it has to be an entire section or the whole rule.

Vice Chairman Nuxoll said a fee rule is the same as a pending rule that either creates a new fee or increases the existing fee. In order for fee rules to become final and effective, this rule must be passed by both bodies by concurrent resolution. **Vice Chairman Nuxoll** said, in order words, it has to be passed by and go through both bodies of the House and the Senate, not just the committees.

Vice Chairman Nuxoll introduced **Dennis R. Stevenson**, Administrative Rules Coordinator, Division of Insurance and Internal Support, Department of Administration, to go over the negotiated rulemaking process. **Mr. Stevenson** clarified the rulemaking process (see attachment on rules) and said he would answer any questions.

Vice Chairman Nuxoll thanked Mr. Stevenson and welcomed **Curt Fransen**, the director of DEQ, so that he could introduce those making presentations. **Mr. Fransen** apologized for being late, saying his group was just before the House Environment Committee, making the same presentation. **Mr. Fransen** said the DEQ has six rulemaking packages before the committee. The first would be presented by **Doug Conde**, a Deputy Attorney General (AG) assigned to represent DEQ and who supervises the other attorneys and AG staff that represent DEQ. **Mr. Fransen** said Mr. Conde has been in that position for about 20 years. The second would be presented by **Orville Green**, the program administrator for DEQ's Waste and Remediation Division, on the rules regarding hazardous waste. The third would be presented by **Barry Burnell**, the administrator of DEQ's Water Quality Division, on the rules regarding drinking water systems. And, the last presenter, **Tiffany Floyd**, would be presenting three different packages regarding DEQ's air pollution control rules. Ms. Floyd – who has a long history with DEQ – is newly back to DEQ after working with the City of Meridian. **Mr. Fransen** also recognized two others: **Mike Simon**, DEQ's air permitting manager, who accompanied Ms. Floyd because a number of the rules are very technical and assistance may be necessary to explain some of the rules; and **Paula Wilson**, DEQ's rules coordinator, who is part of the AG staff assigned to DEQ. **Mr. Fransen** said DEQ is very fortunate to have Ms. Wilson because, due to her efforts, DEQ very rarely, if ever, has any procedural issues with its rules. **Mr. Fransen** said none of the rules before the committee were controversial; public notice was given regarding all the rules; and DEQ received public comments only concerning one of them – the drinking water rule – and Mr. Burnell will explain that during his presentation. **Mr. Fransen** said each of the rules was promulgated for one of basically three reasons: To be consistent with Idaho statutes; to, sometimes, decrease regulatory requirements by providing clarifications or do provide additional flexibility; and, most commonly, to maintain consistency with federal minimum requirements. **Chairman Nuxoll** thanked Mr. Fransen and welcomed Mr. Conde to begin his presentation.

**DOCKET NO.
58-0123-1201**

Mr. Conde thanked the committee and said he's worked for DEQ for a number of years and that he would be presenting the changes DEQ made to the Rules of Administrative Procedure before the DEQ board. The rules govern the way DEQ handles contested cases, which are appeals of DEQ actions or inactions. They also include the rules that govern the way DEQ promulgates rules. **Mr. Conde** said the changes being presented were made to the rules in order to ensure that DEQ's rules are consistent with changes that were made to the Administrative Procedures Act (APA) during the last legislative session, including requiring that all agencies go through the negotiated rulemaking process, if feasible. That is something DEQ is already doing. There were also a number of specific changes to the procedure that agencies must follow when they go through negotiated rulemaking. **Mr. Conde** said the vast majority of the things that were included in the APA were already in DEQ rules. In fact, most of what is in the APA now, as of the last legislative session, is already in DEQ rules. **Mr. Conde** said there are two aspects of the changes in the APA that DEQ thought it needed to reflect in its rules. One, is the APA now requires – if negotiated rulemaking is not conducted – that the notice of regular rulemaking must include a statement regarding why the agency determined it was not feasible to conduct negotiated rule making. **Mr. Conde** said the second requirement is that at the end of the negotiated rulemaking process, the agency must prepare a written summary of unresolved issues, key information considered and conclusions reached during and as a result of the negotiated rulemaking. Then they've got to make that summary available to any persons that attended the negotiated rulemaking meetings.

MOTION:

Senator Bock moved, seconded by **Senator Lodge**, to adopt Docket No. 58-0123-1201. The motion carried by **voice vote**.

**DOCKET NO.
58-0105-1201**

Mr. Green thanked the committee and said this docket describes adoption, by reference, of the federal Hazardous Waste Regulations that were promulgated between July 1, 2011 and June 30, 2012. DEQ performs a routine annual procedure to satisfy requirements of the Idaho Hazardous Waste Management Act, at section 39-4404. This action is also necessary to maintain primacy and authorization for the Idaho DEQ to operate the Federal Hazardous Waste program in lieu of the Environmental Protection Agency in Idaho (EPA). **Mr. Green** said assumption of primacy over hazardous waste from the federal government is also required by the hazardous waste management act in Idaho code. These rules apply to facilities in Idaho that generate, transport, treat, store or dispose of hazardous waste. **Mr. Green** said public notices appeared in the August and November 2012 editions of the Idaho Administrative Bulletin; no public hearing was requested or held; no written comments were received from the public. **Mr. Green** said the Idaho Board of Environmental Quality approved the docket as pending on October 11, 2012 and there will be no increased costs to the regulated community because this is an update to provide consistency with the federal Hazardous Waste Regulations. **Mr. Green** said some rules take effect immediately in Idaho under federal authority and some provide more flexibility that aren't required for primacy to facilities in Idaho. There were no controversial issues in this rulemaking update. **Mr. Green** said the incorporation by reference is current as of July 1, 2012.

Mr. Green said there were three rules that were incorporated by reference in the code of federal regulations and they are fairly straightforward. One of them involved land disposal restrictions that said you can't dispose of hazardous waste in the ground unless it's been treated. The federal regulations had an organic compound that had a numeric standard and not everybody could ascertain that they were meeting that numerical standard because of laboratory and calibration of equipment, so the EPA allowed the use of treatment technologies in lieu of those numeric standards should a company choose to do it that way. **Mr. Green** said those treatment standards are pretty standard: combustion, chemical processes, absorbing them on filters, etc. **Mr. Green** said the second change had to do with hazardous waste manifest forms – a piece of paper that accompanies the waste from the point of its generation until it's disposed that describes what the characteristics of that waste are and how it's been transferred. **Mr. Green** said EPA standardized that for the whole nation a few years ago, and made a standard printing form. One of the things they specified was that if you were distributing a carbon copy to someone it had to be in red ink. Today, some companies have mobile units that print them off on portable computers that don't print red ink, so EPA allows them to use some other way to distinguish that: bolding, different backgrounds, etc., so there's a little more flexibility. **Mr. Green** said the final change was correcting a typographical error on the name of one of the chemicals in one of EPA's long sheets of hazardous waste. **Mr. Green** said DEQ recommends that the committee approves the rules so that DEQ can maintain its authorization to run the program in Idaho.

MOTION:

Senator Schmidt moved, seconded by **Senator Heider**, to adopt Docket No. 58-0105-1201. Motion carried by **voice vote**.

**DOCKET NO.
58-0108-1101**

Mr. Burnell introduced himself and said he was presenting the Idaho rules for public drinking water systems. The rule benefits public water systems by reducing costs and providing flexibility, while at the same time implementing legislative directives. **Mr. Burnell** said the rulemaking complies with *Senate bill 1220*, passed by the 2005 legislature, by adopting engineering standards for the design and operation of membrane filtration, and ultraviolet (UV) disinfection technologies. The new technologies to treat and disinfect drinking water will provide public water systems with additional alternatives for serving safe drinking water to the public. **Mr. Burnell** said pilot testing of treatment systems was modified and preliminary engineering reports section was reorganized. These additional alternatives will help streamline pilot testing and engineering report preparation that will reduce cost to public water systems. **Mr. Burnell** also addressed some additional housekeeping items: deleting unused definitions and providing additional clarifications. **Mr. Burnell** described the public process used for the rule: it was published in the administration bulletin in October of 2011 and there were two negotiated rulemaking meetings. The meetings, which took place on October 26, 2011 and December 1, 2011, were held in the DEQ state office in Boise and teleconferencing was available in the Coeur d'Alene and Idaho Falls offices for those who couldn't come to Boise. **Mr. Burnell** said the notifications of the meetings and the associated public comment periods were sent out by e-mail and were published on DEQ's web page. **Mr. Burnell** said about 20 individuals participated in and attended the meetings. The attendees represented members of the regulated community, such as water operators, public works directors and consulting engineers. The negotiations included discussions about membrane filtration, about UV disinfection, the pilot testing and public notification during depressurization events and backflow assembly repair. After the rule was negotiated, the general public comment period went on from May 1 to June 1, 2012.

Mr. Burnell said a hearing wasn't held since none was requested. **Mr. Burnell** said the DEQ doesn't think there will be an increase or any additional cost to the regulated community as a result of the proposed rules. **Mr. Burnell** said there were two public comments made from one commenter. One was about the public notification when distribution systems depressurize. **Mr. Burnell** explained that when a distribution system depressurizes, there's the chance for bacterial contamination to occur in the distribution system and the public water system purveyor then is obligated to inform the users that it's not safe to drink the water and to issue a boil water order. Once the system's been corrected, there was a requirement that they should then notify the members of the public that it's now safe to drink the water. The public water system owners felt that was too burdensome and that they should only be required to notify the users when there are bacteriological indicators in the water and that it's not safe for consumption. **Mr. Burnell** said his office agreed to make that change. **Mr. Burnell** said the second comment concerned the timeframe to repair or to replace a failed backflow assembly (the systems used to protect the water system from other sources of contamination like pressurized irrigation, or chemical tanks in industrial facilities or hospitals). **Mr. Burnell** said the proposed timeframe for replacing a backflow assembly was five business days. The commenter suggested that the timeframe should be extended because there may be remote locations in the state of Idaho where it'll take time for a replacement part to come to that location. **Mr. Burnell** said his office extended the timeframe to ten business days. **Mr. Burnell** requested the committee approve the rules as proposed and offered to answer any questions.

MOTION: **Senator Martin** moved, seconded by **Senator Heider**, to adopt Docket No. 58-0108-1101. Motion carried by **voice vote**.

DOCKET NO. 58-0101-1201 **Ms. Floyd** introduced herself and said this rule is referred to as "housekeeping" and, specifically, the proposed rule is going to include revisions to three air quality definitions, clarify DEQ's permit to construct exemption criteria, correct typographical errors in the toxic air pollutant rules and streamline DEQ's rule language for non-metallic mineral processing plants known as rock crushers. **Ms. Floyd** said DEQ held the negotiated rulemaking on April 4, 2012 where industry representatives participated and provided written comments, all of which were incorporated and were very minor in nature. DEQ then scheduled a public comment period and a public hearing, concluded in July 2012. **Ms. Floyd** said no additional comments were received. However, there was one clarifying change: the DEQ board wanted to ore added to the general definition of "significant" for particulate matter. **Ms. Floyd** said there are no increased costs to the regulated and there are no controversial issues with any of these rule updates.

MOTION: **Senator Heider** moved, seconded by **Senator Bock**, to adopt Docket No. 58-0101-1201. The motion carried by **voice vote**.

**DOCKET NO.
58-0101-1202**

Ms. Floyd said this rule makes improvements to the motor vehicle inspection and maintenance program by revising the minimum standards and the purpose of this rulemaking is twofold: one, to allow citizens to have their vehicles repaired and tested at the same business and, two, to decrease the regulator burden of the program by allowing DEQ to issue extensions in appropriate circumstances – such as for military personnel away on active duty or others temporarily outside of the testing area. **Ms. Floyd** said DEQ determined that due to the simple nature of this rule, negotiated rulemaking was not conducted. However, DEQ did schedule a public comment period and held a public hearing which concluded in July 2012; no comments were received at that time. **Ms. Floyd** said there will be no increased costs to the regulated community because DEQ thinks of it as an improvement. There are no controversial issues to this rulemaking either.

MOTION:

Senator Martin moved, seconded by **Senator Lodge**, to adopt Docket No. 58-0101-1202. The motion carried by **voice vote**.

**DOCKET NO.
58-0101-1203**

Ms. Floyd said the third and final rule revision is the annual incorporation by reference of the federal regulations. The purpose of this rulemaking is the routine annual incorporation by reference to ensure DEQ's rules are consistent with federal regulations – revised on July 1, 2012. **Ms. Floyd** said this rule will also update the definition of major facility by adding the major source thresholds for greenhouse gasses to be consistent with the federal Greenhouse Gas Tailoring Rule – which was already incorporated by reference, during the 2011 rulemaking process, and then approved by the legislature. **Ms. Floyd** said DEQ did schedule a public comment period and hearing on this. It concluded in September 2012 and no comments were received. **Ms. Floyd** said there will be no increased costs to the regulated community, giving it is just an update, and the regulated community is familiar with the changes and also know where to go to find the information. **Ms. Floyd** said no controversial issues were in this rulemaking. **Ms. Floyd** gave some examples of what was incorporated by reference, such as EPA promulgating a third step of the phased-in approach to the permitting of sources of greenhouse gas emissions that DEQ already had committed to doing in the Greenhouse Gas Tailoring Rule.

MOTION:

Senator Bock moved, seconded by **Senator Martin**, to approve Docket No. 58-0101-1203. The motion carried by **voice vote**.

**PASSING OF
GAVEL:**

Vice Chairman Nuxoll passed the gavel back to Chairman Heider. **Chairman Heider** thanked **Vice Chairman Nuxoll** and everyone at DEQ.

ADJOURNMENT: There being no other business to come before the Committee, **Chairman Heider** adjourned the meeting at 4:18 p.m.

Senator Heider
Chairman

Linda Hamlet
Secretary