

Dear Senators PEARCE, BAIR, Stennett, and
Representatives RAYBOULD, Eskridge, Smith:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the
Department of Environmental Quality:

IDAPA 58.01.10 - Rules Regulating the Disposal of Radioactive Materials Not Regulated Under the
Atomic Energy Act of 1954, As Amended (Docket No. 58-0110-1401).

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 06/23/2014. 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 07/22/2014.

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 334-4834, or send a written request to the address on the
memorandum attached below.



Jeff Youtz
Director

Legislative Services Office Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Resources & Environment Committee and the House Environment, Energy & Technology Committee

FROM: Principal Legislative Research Analyst - Katharine Gerrity

DATE: June 04, 2014

SUBJECT: Department of Environmental Quality

IDAPA 58.01.10 - Rules Regulating the Disposal of Radioactive Materials Not Regulated Under the Atomic Energy Act of 1954, As Amended (Docket No. 58-0110-1401)

The Department of Environmental Quality submits notice of proposed rule at IDAPA 58.01.10 - Rules Regulating the Disposal of Radioactive Materials Not Regulated Under the Atomic Energy Act of 1954, as amended. According to the department, the purpose of the rulemaking is to implement Senate Bill 1260 from the 2014 Legislative Session. The legislation revised the definition of "restricted hazardous waste" in Section 39-4403, Idaho Code. The department notes that Section 39-4403(17), Idaho Code, outlines which waste types are prohibited from disposal in a commercial hazardous waste disposal facility located in Idaho, as well as provides exceptions to the definition for wastes not regulated under the federal Atomic Energy Act of 1954, as amended. The department states that the clarification will also allow several federal agencies to utilize the Grand View facility.

The department states that it intends to present the final proposal to the Idaho Board of Environmental Quality at the October 2014 board meeting for adoption as a pending and temporary rule and that the temporary rule will become effective on November 5, 2014. The department indicates that negotiated rulemaking was not conducted due to the simple nature of the rulemaking and because the department has no discretion with respect to implementing Idaho Code provisions. The department also states that the rule does regulate an activity not regulated by the federal government but is consistent with the legislative directive in Senate Bill 1260. The rulemaking appears to be authorized pursuant to Section 39-4405, Idaho Code.

cc: Department of Environmental Quality
Paula J. Wilson

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.10 - RULES REGULATING THE DISPOSAL OF RADIOACTIVE MATERIALS NOT REGULATED UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

DOCKET NO. 58-0110-1401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. The action is authorized by Section 39-4405, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before June 18, 2014. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to implement Senate Bill 1260 (2014), wherein the Idaho Legislature revised the definition of "restricted hazardous waste" in Section 39-4403, Idaho Code. This amendment to the Idaho Hazardous Waste Management Act clarifies the definition of "restricted hazardous waste" found at Section 39-4403(17), Idaho Code. This portion of the Idaho Code outlines which waste types are prohibited from disposal in a commercial hazardous waste disposal facility located in Idaho, as well as providing exceptions to the definition for wastes not regulated under the federal Atomic Energy Act of 1954, as amended. The proposed clarification is designed to harmonize the Idaho Code with existing federal statutes and regulation while providing a more concise definition of "restricted hazardous waste." The clarification would also allow several federal agencies to utilize the Grand View facility.

After consideration of public comments, DEQ intends to present the final proposal to the Idaho Board of Environmental Quality at the October 2014 Board meeting for adoption as a pending and temporary rule. If adopted by the Board, the temporary rule will become effective on November 5, 2014. The pending rule is expected to be final upon adjournment of the 2015 legislative session if approved by the Idaho Legislature. Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in order to confer a benefit. The State of Idaho would be conferred a benefit on the additional tipping fees to the General Fund of approximately \$100,000. A portion of these tipping fees allows for maintenance of roads leading to the facility and are directed to the Idaho Transportation Department and the County Highway District. Owyhee County also receives a portion of the tipping fee to supplement emergency services. This rulemaking would allow several additional federal agencies to utilize the existing Idaho DEQ permitted disposal capacity of the U.S. Ecology Idaho, Inc. Grand View facility for environmentally protective, secure disposal of these materials.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary:

Incorporation by reference is necessary to ensure that the state rules are consistent with federal regulations. Information for obtaining a copy of the federal regulations is included in the rule.

NEGOTIATED RULEMAKING: Negotiated rulemaking was not conducted. DEQ determined that negotiated rulemaking was not feasible due to the simple nature of this rulemaking and because DEQ has no discretion with respect to implementing Idaho Code provisions. The purpose of this rulemaking is to make the rule consistent with recent changes to the definition of "restricted hazardous waste" in Section 39-4403, Idaho Code.

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does regulate an activity not regulated by the federal government but is consistent with the legislative directive in Senate Bill 1260 (codified at Section 39-4403, Idaho Code).

FISCAL IMPACT STATEMENT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the proposed rulemaking, contact John Brueck at john.brueck@deq.idaho.gov or (208)373-0458.

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 July 2, 2014.

DATED this 9th day of May, 2014.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0110-1401
(Only those Sections being amended are shown.)

004. INCORPORATION BY REFERENCE.

01. General. Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 004.02 shall constitute the full adoption by reference, including any notes and appendices therein. The term “documents” includes codes, standards or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (3-15-02)

02. Documents Incorporated by Reference. The following documents are incorporated by reference into these rules: (3-15-02)

- a. 10 CFR 30.14 through 30.15, revised as of January 1, 201~~4~~. ~~(3-29-12)~~()
- b. 10 CFR 30.18 through 30.21, revised as of January 1, 201~~4~~. ~~(3-29-12)~~()
- c. 10 CFR 32.11, revised as of January 1, 201~~4~~. ~~(3-29-12)~~()
- d. 10 CFR 32.18, revised as of January 1, 201~~4~~. ~~(3-29-12)~~()
- e. 10 CFR 40.13, revised as of January 1, 201~~4~~. (3-29-12)

03. Availability of Referenced Material. Copies of the documents incorporated by reference into these rules are available at the following locations: (3-15-02)

- a. Department of Environmental Quality, 1410 N. Hilton, Boise ID 83706-1255. (3-15-02)
- b. Idaho State Law Library, 451 W. State Street, P.O. Box 83720, Boise ID 83720-0051. (3-15-02)
- c. U.S. Government Printing Office, www.ecfr.gov. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

- 01. Accelerator-Produced Radioactive Material.** Any material made radioactive by a particle accelerator. (3-29-12)
- 02. Board.** The Idaho Board of Environmental Quality. (3-15-02)
- 03. Byproduct Material.** Byproduct Material means: (3-15-02)
- a.** Any radioactive material (except special nuclear material) yielded in, or made radioactive by, exposure to the radiation incident to the process of producing or utilizing special nuclear material; and (3-15-02)
- b.** The tailings or waste produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content. (3-15-02)
- c.** Any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or any material that: (3-29-12)
- i.** Has been made radioactive by use of a particle accelerator; and (3-29-12)
- ii.** Is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; and (3-29-12)
- d.** Any discrete source of naturally occurring radioactive material, other than source material, that: (3-29-12)
- i.** The U.S. Nuclear Regulatory Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium- 226 to the public health and safety or the common defense and security; and (3-29-12)
- ii.** Before, on, or after August 8, 2005, is extracted for use in a commercial, medical, or research activity. (3-29-12)
- 04. Department.** The Idaho Department of Environmental Quality. (3-15-02)
- 05. Exempt Quantities and Concentrations of Byproduct Materials.** Radioactive materials defined as exempt byproduct materials by the U.S. Nuclear Regulatory Commission (10 CFR 30.14 through 30.15, 10 CFR 30.18 through 30.21, 10 CFR 32.11 and 10 CFR 32.18). (3-29-12)
- 06. Naturally Occurring Radioactive Material (NORM).** Any material containing natural radionuclides at natural background concentrations, where human intervention has not concentrated the naturally occurring radioactive material or altered its potential for causing human exposure. NORM does not include source, byproduct or special nuclear material licensed by the U.S. Nuclear Regulatory Commission under the Atomic Energy Act of 1954. (3-15-02)
- 07. Operator.** Any person(s) currently responsible, or responsible at the time of disposal, for the overall operation of a hazardous waste treatment, storage or disposal facility or part of a hazardous waste treatment, storage or disposal site. (3-15-02)
- 08. Owner.** Any person(s) who currently owns, or owned at the time of disposal, a hazardous waste treatment, storage or disposal facility or part of a hazardous waste treatment, storage or disposal site. (3-15-02)
- 09. Person.** Any individual, association, partnership, firm, joint stock company, trust, political subdivision, public or private corporation, state or federal government department, agency, or instrumentality, municipality, industry, or any other legal entity which is recognized by law as the subject of rights and duties.

- (3-15-02)
- 10. Radioactive Material.** Radioactive Material includes: (3-15-02)
- a. Technologically Enhanced Naturally Occurring Radioactive Material; (3-15-02)
 - b. Byproduct material authorized for disposal pursuant to 10 CFR 20.2008(b); (3-29-12)
 - c. Exempt Quantities and Concentrations of Byproduct Materials; (4-2-08)
 - d. Unimportant Quantities of Source Material; and (4-2-08)
 - e. Any other byproduct, source material, or special nuclear material or devices or equipment utilizing such material, which has been *declared* exempt ~~ed or released~~ from ~~radiological control or~~ regulation under the Atomic Energy Act of 1954, as amended, ~~for the purposes of disposal pursuant to 10 CFR 30.11, 10 CFR 40.14, 10 CFR 70.17 to be disposed of in a commercial hazardous waste facility as regulated pursuant to the rules, permit requirements, and acceptance criteria provided for by Chapter 44, Title 39, Idaho Code.~~ (4-2-08)()
- 11. Reasonably Maximally Exposed Individual.** That individual or group of individuals who by reason of location has been determined, through the use of environmental transport modeling and dose calculation, to receive the highest total effective dose equivalent from radiation emitted from the site and/or radioactive material transported off-site. (3-15-02)
- 12. Source Material.** Source material means: (3-15-02)
- a. Uranium or thorium, or any combination thereof, in any physical or chemical form; or (3-15-02)
 - b. Ores which contain by weight one-twentieth of one percent (0.05%) or more of: (3-15-02)
 - i. Uranium; (3-15-02)
 - ii. Thorium; or (3-15-02)
 - iii. Any combination thereof. (3-15-02)
 - c. Source material does not include special nuclear material. (3-15-02)
- 13. Special Nuclear Material.** Special Nuclear Material means: (3-15-02)
- a. Plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the U.S. Nuclear Regulatory Commission determines to be special nuclear material. (3-15-02)
 - b. Any material artificially enriched by any of the material listed in Subsection 010.12.a. (3-15-02)
- 14. Technologically Enhanced Naturally Occurring Radioactive Material (TENORM).** Any naturally occurring radioactive materials not subject to regulation under the Atomic Energy Act whose radionuclide concentrations or potential for human exposure have been increased above levels encountered in the natural state by human activities. TENORM does not include source, byproduct or special nuclear material licensed by the U.S. Nuclear Regulatory Commission under the Atomic Energy Act of 1954. (3-15-02)
- 15. Unimportant Quantities of Source Material.** Radioactive materials defined as unimportant quantities of source materials by the U.S. Nuclear Regulatory Commission (10 CFR 40.13). (3-15-02)