

Dear Senators HEIDER, Nuxoll, Schmidt, and  
Representatives THOMPSON, Anderst, Smith:

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

IDAPA 58.01.01 - Rules for the Control of Air Pollution in Idaho - Proposed Rule (Docket No.  
58-0101-1602);

IDAPA 58.01.01 - Rules for the Control of Air Pollution in Idaho - Proposed Rule (Docket No.  
58-0101-1603);

IDAPA 58.01.05 - Rules and Standards for Hazardous Waste - Proposed Rule (Docket No.  
58-0105-1601).

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 09/13/2016. 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 10/12/2016.

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.



Eric Milstead  
Director

# Legislative Services Office

## Idaho State Legislature

*Serving Idaho's Citizen Legislature*

### MEMORANDUM

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

**FROM:** Deputy Division Manager - Katharine Gerrity

**DATE:** August 24, 2016

**SUBJECT:** Department of Environmental Quality

IDAPA 58.01.01 - Rules for the Control of Air Pollution in Idaho - Proposed Rule (Docket No. 58-0101-1602)

IDAPA 58.01.01 - Rules for the Control of Air Pollution in Idaho - Proposed Rule (Docket No. 58-0101-1603)

IDAPA 58.01.05 - Rules and Standards for Hazardous Waste - Proposed Rule (Docket No. 58-0105-1601)

#### **1. IDAPA 58.01.01 - Rules for the Control of Air Pollution in Idaho**

The Department of Environmental Quality submits notice of proposed rule at IDAPA 58.01.01 - Rules for the Control of Air Pollution in Idaho. According to the department, the rulemaking has been initiated to delete Section 582, Interim Conformity Provisions for Northern Ada County Former Nonattainment Area for PM-10. The department states that Section 582 is outdated and no longer applicable. The department notes that Section 582 was originally promulgated in 2001 to address Clean Air Act transportation conformity requirements for the PM10 Ada County nonattainment area. The department states that transportation conformity requires an area experiencing air quality problems to have a transportation plan consistent with air quality goals. Section 582 was promulgated as a temporary measure that was necessary until a required maintenance plan was developed and that the maintenance plan was developed and approved by EPA on October 17, 2003.

The department notes that negotiated rulemaking was not conducted due to the simple nature of the rulemaking and the fact that the provisions are outdated and no longer applicable. The department confirms that the proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations. The rulemaking appears to be authorized pursuant to Sections 39-105 and 39-107, Idaho Code.

#### **2. IDAPA 58.01.01 - Rules for the Control of Air Pollution in Idaho**

The Department of Environmental Quality submits notice of proposed rule at IDAPA 58.01.01 - Rules for the Control of Air Pollution in Idaho. According to the department, the rulemaking has been initiated to

Mike Nugent, Manager  
Research & Legislation

Cathy Holland-Smith, Manager  
Budget & Policy Analysis

April Renfro, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

Statehouse, P.O. Box 83720  
Boise, Idaho 83720-0054

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update federal regulations incorporated by reference as mandated by the EPA for approval of Idaho's Title V Operating Permit Program pursuant to 40 CFR Part 70 and fulfilling the requirements of Idaho's delegation agreement with EPA under Section 112(l) of the Clean Air Act. The department notes that it also updates citations to other federal regulations as necessary to retain state primacy of Clean Air Act programs.

The department notes that negotiated rulemaking was not conducted due to the simple nature of the rulemaking and the fact that it has no discretion with respect to adopting federal regulations that are necessary for EPA approval of Idaho's Title V Operating Permit Program and state primacy of Clean Air Act programs. The department confirms that the proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations. The rulemaking appears to be authorized pursuant to Sections 39-105 and 39-107, Idaho Code.

### **3. IDAPA 58.01.05 - Rules and Standards for Hazardous Waste**

The Department of Environmental Quality submits notice of proposed rule at IDAPA 58.01.05 - Rules and Standards for Hazardous Waste. According to the department, the purpose of the rulemaking is to ensure that the state rules remain consistent with federal regulations. The department notes that Idaho's Rules and Standards for Hazardous Waste, IDAPA 58.01.05, are updated annually to maintain consistency with the federal regulations implementing the Resource Conservation and Recovery Act (RCRA) as directed by the Idaho Hazardous Waste Management Act (HWMA). The department states that the proposed rule updates federal regulations incorporated by reference to include those revised as of July 1, 2016. According to the department, the rule also denotes instances where emergency notifications must be made to the Idaho Office of Emergency Management in addition to the National Response Center.

The department has also submitted a synopsis detailing the substantive difference between previously incorporated material and the latest revised edition or version of incorporated material being proposed. The department notes that incorporation by reference allows it to keep its rules up to date with federal regulation changes and simplifies compliance for the regulated community.

The department indicates that negotiated rulemaking was not conducted due to the simple nature of the rulemaking and because it has no discretion with respect to adopting the federal regulations implementing the Resource Conservation and Recovery Act (RCRA) as directed by the Idaho Hazardous Waste Management Act (HWMA). The department confirms 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. The rulemaking appears to be authorized by Chapters 44 and 58, Title 39, Idaho Code. The department also notes that 40 CFR 271.21(e) and Section 39-4404, Idaho Code, require DEQ to adopt amendments to federal law as proposed in the docket.

cc: Department of Environmental Quality  
Paula J. Wilson

**IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**

**58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO**

**DOCKET NO. 58-0101-1602**

**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 Sections 39-105 and 39-107, Idaho Code.

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

**Tuesday, September 6, 2016 - 3:00 PM**

**Department of Environmental Quality  
Conference Room A  
1410 N. Hilton  
Boise, ID 83706**

The hearing site 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:** This rulemaking has been initiated to delete Section 582, Interim Conformity Provisions for Northern Ada County Former Nonattainment Area for PM-10. In reviewing the Rules for Control of Air Pollution in Idaho, DEQ discovered that Section 582 is outdated and no longer applicable. Section 582 was originally promulgated in 2001 to address Clean Air Act transportation conformity requirements for the PM10 Ada County nonattainment area. Transportation conformity requires an area experiencing air quality problems to have a transportation plan consistent with air quality goals. Section 582 was promulgated as a temporary measure that was necessary until a required maintenance plan was developed. The maintenance plan has since been developed and was approved by EPA on October 17, 2003.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in the fall of 2016 for adoption of a pending rule. This pending rule docket is expected to be final and effective upon adjournment of the 2017 legislative session if adopted by the Board and approved by the Legislature. DEQ will submit the final rule docket to EPA for removal of Section 582 from Idaho's State Implementation Plan.

**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: Not applicable.

**NEGOTIATED RULEMAKING:** Negotiated rulemaking was not conducted. DEQ determined that negotiated rulemaking is not feasible due to the simple nature of this rulemaking and because the provisions are outdated and are no longer applicable.

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

**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 technical questions concerning this rulemaking, contact Carl Brown at [carl.brown@deq.idaho.gov](mailto:carl.brown@deq.idaho.gov) or (208) 373-0206.

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 September 6, 2016.

Dated this 3rd Day of August, 2016

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](mailto:paula.wilson@deq.idaho.gov)

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0101-1602  
(Only Those Sections With Amendments Are Shown.)

~~582. INTERIM CONFORMITY PROVISIONS FOR NORTHERN ADA COUNTY FORMER NON-ATTAINMENT AREA FOR PM-10.~~

~~The purpose of Section 582 is to implement part of the settlement of "Idaho Clean Air Force, et al. v. EPA, et al." Section 582 requires that the growth in transportation related PM-10 emissions be offset annually in the absence of federal transportation conformity requirements in the former PM-10 nonattainment area in northern Ada County, Idaho. Section 582 will remain in place until a PM-10 maintenance demonstration and maintenance plan containing a motor vehicle emissions budget can be developed, submitted to the U.S. Environmental Protection Agency (EPA) and approved as meeting the requirements of Section 175A of the Clean Air Act, and the transportation plan and TIP for northern ADA County has been found to conform to the applicable implementation plan. The Department will prepare a PM-10 maintenance plan within the agreed upon time frame to be submitted to EPA for approval.~~

~~(3-30-01)~~

~~01. Definitions. Terms not specifically defined in Subsection 582.01 are defined in Sections 565 and 566 of these rules.~~

~~(3-30-01)~~

~~a. Annual Reduction Amount. Represents the estimated, annual average increase in PM-10 emissions in the former nonattainment area expected between the years 1997 and 2005 and is calculated at seven hundred fifty (750) kg/day.~~

~~(3-30-01)~~

~~b. Consent Decree. The consent decree approved by the Ninth Circuit Court of Appeals to resolve "Idaho Clean Air Force, et al. v. EPA, et al.," (Ninth Circuit Docket Nos. 99-70289 & 99-70576).~~

~~(3-30-01)~~

~~c. Emissions Reductions. Reductions in emissions of PM-10 or PM-10 precursors to be achieved by transportation control measures (as defined in 40 CFR 93.101) or other binding emissions control measures. Control measures adopted by the Metropolitan Planning Organization and approved by the Department shall be enforceable obligations of the State Implementation Plan (SIP).~~

~~(3-30-01)~~

~~d. Former Nonattainment Area. That portion of northern Ada County designated as a nonattainment area for PM-10 by 40 CFR 81.87 prior to March 12, 1999.~~

~~(3-30-01)~~

~~e. Interim Period. The period beginning with the fiscal year commencing October 1, 2000, until EPA approves a maintenance plan containing a motor vehicle emission budget for the former nonattainment area and the Metropolitan Planning Organization adopts a transportation plan and TIP that is found to conform in accordance with Section 176(e) of the Clean Air Act and 40 CFR Part 93.~~

~~(3-30-01)~~

~~f. Metropolitan Planning Organization (MPO). For purposes of Section 582, Community Planning Association of Southwest Idaho (COMPASS), or its successor organization, is the MPO for the former nonattainment area.~~

~~(3-30-01)~~

~~g. Regionally Significant Project. A transportation project, other than an exempt project, that is on a facility which serves regional transportation needs (such as access to and from the area outside the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including, at a minimum: (3-30-01)~~

~~i. All principal arterial highways; (3-30-01)~~

~~ii. All fixed guideway transit facilities that offer an alternative to regional highway travel; and (3-30-01)~~

~~iii. Any other facilities determined to be regionally significant through Section 570, interagency consultation. (3-30-01)~~

~~02. Applicability. The provisions of Section 582 shall apply during the interim period. The transportation conformity requirements of 40 CFR Part 93 applicable to nonattainment areas shall apply to the former nonattainment area pursuant to 42 U.S.C. Section 7506(e)(5) if the area is designated nonattainment or attainment with an approved maintenance plan. The provisions of Section 582 shall no longer apply after a maintenance demonstration and maintenance plan containing motor vehicle emissions budget(s) for PM 10 is submitted by the Department as a State Implementation Plan (SIP) revision, has been approved by EPA as meeting the requirements of Section 175A of the Clean Air Act, and a transportation plan and TIP have been found to conform to the applicable implementation plan pursuant to 40 CFR Part 93. (3-30-01)~~

~~03. Adoption of Control Measures and Demonstration of Emissions Reductions. As a precondition to: (3-30-01)~~

~~a. The expenditure of any non-exempt federal transportation funds that would be prohibited under a conformity lapse; (3-30-01)~~

~~b. The construction of any regionally significant projects that would be prohibited under a conformity lapse; (3-30-01)~~

~~c. The execution by the Idaho Transportation Department or the Ada County Highway District of any project agreements required by 23 U.S.C. Section 106(a) that would be prohibited under a conformity lapse; or (3-30-01)~~

~~d. The execution of agreements with contractors to begin construction on a highway project that is not exempt from a conformity determination pursuant to 40 CFR 93.126 and 93.127 during any fiscal year during the interim period, the MPO shall: (3-30-01)~~

~~i. Demonstrate that the control measures adopted to achieve emissions reductions in prior fiscal years have been implemented and will continue to be implemented during the next fiscal year; (3-30-01)~~

~~ii. Demonstrate that the control measures adopted to achieve emissions reductions have achieved the magnitude of emissions reductions expected as a result of the implementation of such measures; (3-30-01)~~

~~iii. Adopt (subject to approval by the Department pursuant to Subsection 852.04) control measures adequate to achieve emissions reductions reasonably calculated to reduce actual emissions during the next fiscal year in the former nonattainment area by the annual reduction amount, at a minimum, in addition to any emissions reductions required to be achieved prior to the beginning of such fiscal year; and (3-30-01)~~

~~iv. With regard to control measures that will not be implemented directly by the MPO, obtain written commitments from the responsible entities that the control measures will be implemented in the manner and within the fiscal year required to meet the emission reductions. (3-30-01)~~

~~04. Department Review. Following adoption by the MPO, the control measures designed to achieve the~~

~~new emissions reductions for the next fiscal year, associated emissions calculations, and the demonstrations required by Subsection 582.03 shall be submitted to the Department no later than April 1 of each year. The Department shall review and approve the submission if the Department determines that the requirements of Subsection 582.03 are met in accordance with the following:~~ (3-30-01)

~~a. The Department will respond to the submittal within thirty (30) days of receipt. The response may include approval of the submission, a request for further information, or conditional approval of the control measures subject to submission of evidence that entities responsible for implementation of the measures have adopted any ordinances, appropriations or other approvals needed to complete the implementation of such measures. If further information is required, such information shall be submitted to the Department within thirty (30) days of request. The Department shall take final action to approve or deny the submission within ninety (90) days of the MPO's submission of the documentation required by Subsection 582.03; and~~ (3-30-01)

~~b. The Department shall by July 1 of each year during the interim period provide to the MPO, the Ada County Highway District Commissioners and the Idaho Department of Transportation a report listing the emissions control measures implemented and the emissions control measures planned but not yet implemented for the then-current fiscal year, together with the Department's written determination as to whether the Emissions Reductions associated with such emissions control measures satisfy the requirements under Section 582.~~ (3-30-01)

~~05. **First Year Emissions Reductions.** For the initial fiscal year to which Section 582 applies, the MPO shall adopt new control measures reasonably calculated to achieve emissions reductions of two thousand (2000) kg/day. The MPO may take credit for any reductions in transportation-related emissions of PM-10 that were actually achieved by the implementation of enforceable control measures or other measures following March 12, 1999, and that continue to be implemented during the interim period.~~ (3-30-01)

~~06. **Restrictions if Emissions Reductions Not Adopted.** If the MPO adopts control measures for the purpose of achieving emissions reductions in a fiscal year, and the relevant local governmental entities do not adopt the necessary implementing ordinances or appropriate necessary funds, if any, by the beginning of the following fiscal year, the MPO shall not expend any non-exempt federal transportation funds or construct any regionally significant projects, that would be prohibited under a conformity lapse, in such following fiscal year until each of the relevant local governmental entities, if any, take such actions as may be necessary to implement the control measures previously approved by the MPO and the Department.~~ (3-30-01)

~~07. **Restrictions on TIP if Emissions Reductions Not Adopted or Achieved.** If:~~ (3-30-01)

~~a. Control measures required to achieve emissions reductions for a prior fiscal year have not been implemented, or~~ (3-30-01)

~~b. The Department does not approve the control measures submitted by the MPO as adequate to achieve the required emissions reductions for any fiscal year; then:~~ (3-30-01)

~~i. The MPO shall not submit any TIP or TIP revision for a project subject to the requirements of Subsection 582.03, that would be prohibited under a conformity lapse, to the Idaho Transportation Department for inclusion into the State Transportation Improvement Program or to FHWA/FTA for approval, and~~ (3-30-01)

~~ii. No new agreement for a project subject to the requirements of Subsection 582.03, that would be prohibited under a conformity lapse, may be executed by the Idaho Transportation Department or the Ada County Highway District until control measures adequate to achieve the total emissions reductions required for any prior fiscal year are implemented and the control measures adequate to achieve the total emissions reductions for the next fiscal year are approved.~~ (3-30-01)

~~5832.~~ -- 584. (RESERVED)

# IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

## 58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-1603

### 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 Sections 39-105 and 39-107, Idaho Code. This rulemaking updates federal regulations incorporated by reference as mandated by the U.S. Environmental Protection Agency (EPA) for approval of Idaho's Title V Operating Permit Program pursuant to 40 CFR Part 70 and fulfilling the requirements of Idaho's delegation agreement with EPA under Section 112(l) of the Clean Air Act. It also updates citations to other federal regulations necessary to retain state primacy of Clean Air Act programs.

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

**Tuesday, September 6, 2016 - 3:00 PM**

**Department of Environmental Quality  
Conference Room A  
1410 N. Hilton  
Boise, ID 83706**

The hearing site 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 ensure that the state rules remain consistent with federal regulations. The Rules for the Control of Air Pollution in Idaho, IDAPA 58.01.01, are updated annually to maintain consistency with federal regulations implementing the Clean Air Act. This proposed rule updates federal regulations incorporated by reference to include those revised as of July 1, 2016.

Members of the regulated community who may be subject to Idaho's air quality rules, special interest groups, 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 the fall of 2016 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2017 legislative session if adopted by the Board and approved by the Legislature. DEQ will submit the final rule to EPA for approval.

**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:

Adoption of federal regulations is necessary for EPA approval of Idaho's Title V Operating Permit Program and state primacy of Clean Air Act programs. Incorporation by reference allows DEQ to keep its rules up to date with federal regulation changes and simplifies compliance for the regulated community. Information for obtaining a copy of the federal regulations is included in the rule.

In compliance with Idaho Code 67-5223(4), DEQ prepared a brief synopsis detailing the latest revised edition or version of the incorporated material being proposed for incorporation by reference. The Overview of Incorporations by Reference can be obtained at [www.deq.idaho.gov/58-0101-1603](http://www.deq.idaho.gov/58-0101-1603) or by contacting the undersigned.

**NEGOTIATED RULEMAKING:** Negotiated rulemaking was not conducted. DEQ determined that negotiated rulemaking is not feasible due to the simple nature of this rulemaking and because DEQ has no discretion with



respect to adopting federal regulations that are necessary for EPA approval of Idaho's Title V Operating Permit Program and state primacy of Clean Air Act programs. Whenever possible, DEQ incorporates federal regulations by reference to ensure that the state rules are consistent with federal regulations.

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

**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 technical questions concerning this rulemaking, contact Carl Brown at [carl.brown@deq.idaho.gov](mailto:carl.brown@deq.idaho.gov) or (208) 373-0206.

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 September 6, 2016.

Dated this 3rd Day of August, 2016.

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](mailto:paula.wilson@deq.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0101-1603**  
**(Only Those Sections With Amendments Are Shown.)**

**107. INCORPORATIONS BY REFERENCE.**

**01. General.** Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 107.03 shall constitute the full incorporation into these rules of that document for the purposes of the 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. (5-1-94)

**02. Availability of Referenced Material.** Copies of the documents incorporated by reference into these rules are available at the following locations: (5-1-94)

- and;
- a.** All federal publications: U.S. Government Printing Office at <http://www.ecfr.gov/cgi-bin/ECFR>; (3-25-16)
  - b.** Statutes of the state of Idaho: <http://legislature.idaho.gov/idstat/TOC/IDStatutesTOC.htm>; and (3-20-14)
  - c.** All documents herein incorporated by reference: (7-1-97)
  - i.** Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255 at (208) 373-

0502. (7-1-97)
- ii. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, Idaho 83720-0051, (208) 334-3316. (7-1-97)
- 03. Documents Incorporated by Reference.** The following documents are incorporated by reference into these rules: (5-1-94)
- a.** Requirements for Preparation, Adoption, and Submittal of Implementation Plans, [40 CFR Part 51](#) revised as of July 1, 201~~5~~6. The following portions of 40 CFR Part 51 are expressly excluded from any incorporation by reference into these rules: ~~(3-25-16)~~(    )
- i. All sections included in 40 CFR Part 51, Subpart P, Protection of Visibility, except that 40 CFR 51.301, 51.304(a), 51.307, and 51.308 are incorporated by reference into these rules; and (3-30-07)
- ii. Appendix Y to Part 51, Guidelines for BART Determinations Under the Regional Haze Rule. (3-30-07)
- b.** National Primary and Secondary Ambient Air Quality Standards, [40 CFR Part 50](#), revised as of July 1, 201~~5~~6. ~~(3-25-16)~~(    )
- c.** Approval and Promulgation of Implementation Plans, [40 CFR Part 52](#), Subparts A and N and Appendices D and E, revised as of July 1, 201~~5~~6. ~~(3-25-16)~~(    )
- d.** Ambient Air Monitoring Reference and Equivalent Methods, [40 CFR Part 53](#), revised as of July 1, 201~~5~~6. ~~(3-25-16)~~(    )
- e.** Ambient Air Quality Surveillance, [40 CFR Part 58](#), revised as of July 1, 201~~5~~6. ~~(3-25-16)~~(    )
- f.** Standards of Performance for New Stationary Sources, [40 CFR Part 60](#), revised as of July 1, 201~~5~~6. ~~(3-25-16)~~(    )
- g.** National Emission Standards for Hazardous Air Pollutants, [40 CFR Part 61](#), revised as of July 1, 201~~5~~6. ~~(3-25-16)~~(    )
- h.** Federal Plan Requirements for Hospital/Medical/Infectious Waste Incinerators Constructed on or Before December 1, 2008, [40 CFR Part 62, Subpart HHH](#), revised as of July 1, 201~~5~~6. ~~(3-25-16)~~(    )
- i.** National Emission Standards for Hazardous Air Pollutants for Source Categories, [40 CFR Part 63](#), revised as of July 1, 201~~5~~6. ~~(3-25-16)~~(    )
- j.** Compliance Assurance Monitoring, [40 CFR Part 64](#), revised as of July 1, 201~~5~~6. ~~(3-25-16)~~(    )
- k.** State Operating Permit Programs, [40 CFR Part 70](#), revised as of July 1, 201~~5~~6. ~~(3-25-16)~~(    )
- l.** Permits, [40 CFR Part 72](#), revised as of July 1, 201~~5~~6. ~~(3-25-16)~~(    )
- m.** Sulfur Dioxide Allowance System, [40 CFR Part 73](#), revised as of July 1, 201~~5~~6. ~~(3-25-16)~~(    )
- n.** Protection of Stratospheric Ozone, [40 CFR Part 82](#), revised as of July 1, 201~~5~~6. ~~(3-25-16)~~(    )
- o.** Clean Air Act, 42 U.S.C. Sections 7401 through 7671g (1997). (3-19-99)
- p.** Medical Waste Combustors, [Section 39-128, Idaho Code \(1992\)](#). (3-20-14)

## IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

### 58.01.05 - RULES AND STANDARDS FOR HAZARDOUS WASTE

#### DOCKET NO. 58-0105-1601

#### 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 Chapters 44 and 58, Title 39, Idaho Code. In addition, 40 CFR 271.21(e) and Section 39-4404, Idaho Code, require DEQ to adopt amendments to federal law as proposed under this docket.

**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 August 17, 2016. If no such written request is received, a public hearing will not be held.

**DESCRIPTIVE SUMMARY:** The purpose of this rulemaking is to ensure that the state rules remain consistent with federal regulations. Idaho's Rules and Standards for Hazardous Waste, IDAPA 58.01.05, are updated annually to maintain consistency with the federal regulations implementing the Resource Conservation and Recovery Act (RCRA) as directed by the Idaho Hazardous Waste Management Act (HWMA). This proposed rule updates federal regulations incorporated by reference to include those revised as of July 1, 2016. In addition, this rulemaking also denotes instances where emergency notifications must be made to the Idaho Office of Emergency Management in addition to the National Response Center.

Groups interested in hazardous waste and handlers of hazardous waste including generators, transporters, and treatment, storage, and disposal facilities 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 the fall of 2016 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2017 legislative session if adopted by the Board and approved by the Legislature.

**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:

Adoption of federal regulations is necessary to maintain program primacy. Incorporation by reference allows DEQ to keep its rules up to date with federal regulation changes and simplifies compliance for the regulated community. Information for obtaining a copy of the federal regulations is included in the rule.

In compliance with Section 67-5223(4), Idaho Code, DEQ prepared a brief synopsis detailing the substantive difference between the previously incorporated material and the latest revised edition or version of the incorporated material being proposed for incorporation by reference. The Overview of Incorporations by Reference can be obtained at [www.deq.idaho.gov/58-0105-1601](http://www.deq.idaho.gov/58-0105-1601) or by contacting the undersigned.

**NEGOTIATED RULEMAKING:** Negotiated rulemaking was not conducted. DEQ determined that negotiated rulemaking is not feasible due to the simple nature of this rulemaking and because DEQ has no discretion with respect to adopting EPA's federal regulations implementing the Resource Conservation and Recovery Act (RCRA) as directed by the Idaho Hazardous Waste Management Act (HWMA). Whenever possible, DEQ incorporates federal regulations by reference to ensure that the state rules are consistent with federal regulations.

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

**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, SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning the proposed rulemaking, contact Matt Alvarado at [matt.alvarado@deq.idaho.gov](mailto:matt.alvarado@deq.idaho.gov) or (208)373-0554.

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The Department will consider all written comments received by the undersigned on or before August 31, 2016.

DATED this 3rd Day of August, 2016.

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](mailto:paula.wilson@deq.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0105-1601**  
**(Only Those Sections With Amendments Are Shown.)**

**002. INCORPORATION BY REFERENCE OF FEDERAL REGULATIONS.**

Any reference in these rules to requirements, procedures, or specific forms contained in the Code of Federal Regulations (CFR), Title 40, Parts 124, 260 - 268, 270, 273, 278, and 279 shall constitute the full adoption by reference of that part and Subparts as they appear in 40 CFR, revised as of July 1, 2015~~6~~, including any notes and appendices therein, unless expressly provided otherwise in these rules. (~~3-25-16~~)(    )

**01. Exceptions.** Nothing in 40 CFR Parts 260 - 268, 270, 273, 278, 279 or Part 124 as pertains to permits for Underground Injection Control (U.I.C.) under the Safe Drinking Water Act, the Dredge or Fill Program under Section 404 of the Clean Water Act, the National Pollution Discharge Elimination System (NPDES) under the Clean Water Act or Prevention of Significant Deterioration Program (PSD) under the Clean Air Act is adopted or included by reference herein. (5-8-09)

**02. Availability of Referenced Material.** The federal regulations adopted by reference throughout these rules are maintained at the following locations: (7-2-97)

- a. U.S. Government Printing Office, <http://www.ecfr.gov/cgi-bin/ECFR>; and (3-25-16)
- b. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, ID 83720-0051, (208) 334-3316; and (7-2-97)
- c. Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, (208) 373-0502. (7-2-97)

**(BREAK IN CONTINUITY OF SECTIONS)**

**004. HAZARDOUS WASTE MANAGEMENT SYSTEM.**

40 CFR Part 260 and all Subparts, except 40 CFR 260.2, are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2015~~6~~. For the purposes of 40 CFR 260.10 in the definition of electronic manifest and electronic manifest system, "EPA" shall be defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR

260.10, in the definition of hazardous waste constituent, “Administrator” shall be defined as the U.S. Environmental Protection Agency Administrator. For purposes of 40 CFR 260.20, “Federal Register” shall be defined as the Idaho Administrative Bulletin. ~~(3-25-16)~~( )

**005. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.**

40 CFR Part 261 and all Subparts (excluding 261.4(b)(17)), except the language “in the Region where the sample is collected” in 40 CFR 261.4(e)(3)(iii), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2015~~6~~. For purposes of 40 CFR 261.10 and 40 CFR 261.11, “Administrator” shall be defined as the U.S. Environmental Protection Agency Administrator. For purposes of 40 CFR 261.4(b)(11)(ii), 40 CFR 261.39(a)(5), 40 CFR 261.41, and 40 CFR 261 Appendix IX, “EPA” shall be defined as the U.S. Environmental Protection Agency. Copies of annual reports and advance notifications under these sections shall also be sent to the Director. ~~(3-25-16)~~( )

**01. Hazardous Secondary Materials Managers Emergency Notification.** In addition to the emergency notification required by 40 CFR 261.411(d)(3) and 261.420(f)(4)(ii), the emergency coordinator must also immediately notify the Idaho Office of Emergency Management by telephone, 1-800-632-8000, to file an identical report. ( )

**042. Excluded Wastes.** Chemically Stabilized Electric Arc Furnace Dust (CSEAFD) generated by Envirosafe Services of Idaho, Inc. (ESII) at ESII’s facility in Grand View, Idaho using the Super Detox(R) treatment process as modified by ESII and that is disposed of in a Subtitle D or Subtitle C landfill is excluded from the lists of hazardous waste provided ESII implements a program that meets the following conditions: (3-16-96)

**a. Verification Testing Requirements.** Sample Collection and analyses, including quality control procedures, conducted pursuant to Subsections 005.042.b. and 005.042.c., must be performed according to SW-846 methodologies and the RCRA Part B permit, including future revisions. ~~(3-16-96)~~( )

**b. Initial Verification Testing.** (3-16-96)

**i.** For purposes of Subsections 005.042.b., “new source” shall mean any generator of Electric Arc Furnace Dust (EAFD), EPA and Idaho Department of Environmental Quality Hazardous Waste No. KO61, whose waste has not previously been processed by ESII using the Super Detox(R) treatment process resulting in processed EAFD which has been subjected to initial verification testing and has demonstrated compliance with the delisting levels specified in Subsection 005.042.d. ~~(3-16-96)~~( )

**ii.** Prior to the initial treatment of any new source of EAFD, ESII must notify the Department in writing. The written notification shall include: (3-16-96)

(1) The waste profile information; and (3-16-96)

(2) The name and address of the generator. (3-16-96)

**iii.** The first four (4) consecutive batches treated must be sampled in accordance with Subsection 005.042.a. Each of the four (4) samples shall be analyzed to determine if the CSEAFD generated meets the delisting levels specified in Subsection 005.042.d. ~~(3-16-96)~~( )

**iv.** If the initial verification testing demonstrates that the CSEAFD samples meet the delisting levels specified in Subsection 005.042.d., ESII shall submit the operational and analytical test data, including quality control information, to the Department, in accordance with Subsection 005.042.f. Subsequent to such data submittal, the CSEAFD generated from EAFD originating from the new source shall be considered delisted. ~~(3-16-96)~~( )

**v.** CSEAFD generated by ESII from EAFD originating from a new source shall be managed as hazardous waste in accordance with Subtitle C of RCRA until: (3-16-96)

(1) Initial verification testing demonstrates that the CSEAFD meets the delisting levels specified in Subsection 005.042.d.; and ~~(3-16-96)~~( )

(2) The operational and analytical test data is submitted to the Department pursuant to Subsection 005.0~~4~~<sup>2</sup>.b.iv. ~~(3-16-96)~~( )

vi. For purposes of Subsections 005.0~~4~~<sup>2</sup>.b. and 005.0~~4~~<sup>2</sup>.c., “batch” shall mean the CSEAFD which results from a single treatment episode in a full scale mixing vessel. ~~(3-16-96)~~( )

**c. Subsequent Verification Testing.** (3-16-96)

i. Subsequent to initial verification testing, ESII shall collect a representative sample, in accordance with Subsection 005.0~~4~~<sup>2</sup>.a., from each batch of CSEAFD generated by ESII. ESII may, at its discretion, conduct subsequent verification testing on composite samples. In no event shall a composite sample consist of representative samples from more than twenty (20) batches of CSEAFD. ~~(3-16-96)~~( )

ii. The samples shall be analyzed prior to disposal of each batch of CSEAFD to determine if the CSEAFD meets the delisting levels specified in Subsection 005.0~~4~~<sup>2</sup>.d. ~~(3-16-96)~~( )

iii. Each batch of CSEAFD generated by ESII shall be subjected to subsequent verification testing no later than thirty (30) days after it is generated by ESII. (3-16-96)

iv. If the levels of constituents measured in a sample, or composite sample, of CSEAFD do not exceed the levels set forth in Subsection 005.0~~4~~<sup>2</sup>.d., then any batch of CSEAFD which contributed to the sample that does not exceed the levels set forth in Subsection 005.0~~4~~<sup>2</sup>.d. is non-hazardous and may be managed and/or disposed of in a Subtitle D or Subtitle C landfill. ~~(3-16-96)~~( )

v. If the constituent levels in a sample, or composite sample, exceed any of the delisting levels set forth in Subsection 005.0~~4~~<sup>2</sup>.d., then ESII must submit written notification of the results of the analysis to the Department within fifteen (15) days from receiving the final analytical results, and any CSEAFD which contributed to the sample must be: ~~(3-16-96)~~( )

(1) Retested, and retreated if necessary, until it meets the levels set forth in Subsection 005.0~~4~~<sup>2</sup>.d.; or ~~(3-16-96)~~( )

(2) Managed and disposed of in accordance with Subtitle C of RCRA. (3-16-96)

vi. Each batch of CSEAFD shall be managed as hazardous waste in accordance with Subtitle C of RCRA until subsequent verification testing demonstrates that the CSEAFD meets the delisting levels specified in Subsection 005.0~~4~~<sup>2</sup>.d. ~~(3-16-96)~~( )

**d. Delisting Levels.** (3-16-96)

i. All leachable concentrations for these metals must not exceed the following levels (mg/l):

antimony	0.06	mercury	0.009
arsenic	0.50	nickel	1
barium	7.60	selenium	0.16
beryllium	0.010	silver	0.30
cadmium	0.050	thallium	0.020
chromium	0.33	vanadium	2
lead	0.15	zinc	70

(3-16-96)

ii. Metal concentrations must be measured in the waste leachate by the method specified in 40 CFR

Part 261.24. (3-16-96)

**e.** Modification of Treatment Process. (3-16-96)

i. If ESII makes a decision to modify the Super Detox(R) treatment process from the description of the process as set forth in ESII's Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995, ESII shall notify the Department in writing prior to implementing the modification. (3-16-96)

ii. After ESII's receipt of written approval from the Department, and subject to any conditions included with the approval, ESII may implement the proposed modification. (3-16-96)

iii. If ESII modifies its treatment process without first receiving written approval from the Department, this exclusion of waste will be void from the time the process was modified. (3-16-96)

iv. ESII's Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995 is available at the Department of Environmental Quality, Waste Management and Remediation Division, 1410 N. Hilton, Boise, Idaho 83706. (3-29-12)

**f.** Records and Data Retention and Submittal. (3-16-96)

i. Records of disposal site, operating conditions and analytical data from verification testing must be compiled, summarized, and maintained at ESII's Grand View facility for a minimum of five (5) years from the date the records or data are generated. (3-16-96)

ii. The records and data maintained by ESII must be furnished upon request to the Department or EPA. (3-16-96)

iii. Failure to submit requested records or data within ten (10) business days of receipt of a written request or failure to maintain the required records and data on site for the specified time, will be considered by the Department, at its discretion, sufficient basis to revoke the exclusion to the extent directed by the Department. (3-16-96)

iv. All records or data submitted to the Department must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the records or data submitted: "Under civil and/or criminal penalty of law for the making or submission of false or fraudulent statements or representations, I certify that the information contained in or accompanying this document is true, accurate, and complete. As to any identified sections of this document for which I cannot personally verify the truth and accuracy, I certify as the ESII official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete. In the event that any of this information is determined by the Department in its sole discretion to be false, inaccurate, or incomplete, and upon conveyance of this fact to ESII, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by the Department and that ESII will be liable for any actions taken in contravention of ESII's RCRA and CERCLA obligations premised upon ESII's reliance on the void exclusion." (3-16-96)

**g.** Facility Merger and Name Change. On May 4, 2001, the Department was notified of a stock transfer that resulted in ESII's facility merging with American Ecology. This created a name change from EnviroSAFE Services of Idaho, Inc. (ESII) to US Ecology Idaho, Inc. effective May 1, 2001. All references to EnviroSAFE Services of Idaho, Inc. or ESII now refer to US Ecology Idaho, Inc. (3-15-02)

**006. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE.**

**01. Incorporation by Reference.** 40 CFR Part 262 and all Subparts (excluding Subparts I and J and 40 CFR 262.10(j), 262.34(j),(k),(l)), except for the language "for the Region in which the generator is located" in 40 CFR 262.42(a)(2) and 40 CFR 262.42(b), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2015. For purposes of 40 CFR 262.53, 262.55, and 262.56, "EPA" shall be defined as the U.S. Environmental Protection Agency. Copies of advance notification, annual reports, and exception reports, required

under those sections, shall also be provided to the Director. For purposes of 40 CFR 262.20, 262.21, 262.24, 262.25, 262.51, 262.54(e), 262.54(g)(1), 262.55, 262.56, 262.60, and 262.85(g), EPA or Environmental Protection Agency shall be defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR Part 262 Subparts E, F, H, and 40 CFR 262.41(a)(4), "United States or U.S." shall be defined as the United States. (3-25-16)( )

**02. Generator Emergency Notification.** In addition to the emergency notification required by 40 CFR 265.56(d)(2), 262.34(d)(5)(iv)(C), (see 40 CFR 262.34(a)(4)), 263.30(c)(1), and 264.56(d)(2), the emergency coordinator must also immediately notify the Idaho Office of Emergency Management by telephone, 1-800-632-8000, to file an identical report. (3-15-02)

**007. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.**

40 CFR Part 263 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2015. For purposes of 40 CFR 263.20(g), 263.20(g)(1), 263.20(g)(4), 263.21(a)(4), and 263.22(d), "United States" shall be defined as the United States. For the purposes of 40 CFR 263.20(a), "EPA" shall be defined as U.S. Environmental Protection Agency. (3-25-16)( )

**008. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.**

40 CFR Part 264 and all Subparts (excluding 40 CFR 264.1(f), 264.1(g)(12), 264.149, 264.150, 264.301(l), 264.1030(d), 264.1050(g), 264.1080(e), 264.1080(f) and 264.1080(g)) are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2015. For purposes of 40 CFR Subsection 264.12(a), "Regional Administrator" shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. For purposes of 40 CFR 264.71 and 264.1082(c)(4)(ii), "EPA" shall be defined as the U.S. Environmental Protection Agency. (3-25-16)( )

**009. INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.**

40 CFR Part 265, and all Subparts (excluding Subpart R, 40 CFR 265.1(c)(4), 265.1(c)(15), 265.149, 265.150, 265.1030(c), 265.1050(f), 265.1080(e), 265.1080(f), and 265.1080(g)), except the language contained in 40 CFR 265.340(b)(2) as replaced with: "The following requirements continue to apply even when the owner or operator has demonstrated compliance with the MACT requirements of part 63, subpart EEE of this chapter: 40 CFR 265.351 (closure) and the applicable requirements of Subparts A through H, BB and CC of this part," are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2015. For purposes of 40 CFR Subsection 265.12(a), "Regional Administrator" shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. For purposes of 40 CFR 265.71 and 265.1083(c)(4)(ii), "EPA" shall be defined as the U.S. Environmental Protection Agency. (3-25-16)( )

**010. STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE FACILITIES.**

40 CFR Part 266 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2015. (3-25-16)( )

**011. LAND DISPOSAL RESTRICTIONS.**

40 CFR Part 268 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2015, except for 40 CFR 268.1(e)(3), 268.5, 268.6, 268.13, 268.42(b), and 268.44(a) through (g). The authority for implementing the provisions of these excluded sections remains with the EPA. However, the requirements of Sections 39-4403(17) and 39-4423, Idaho Code, shall be applied in all cases where these requirements are more stringent than the federal standards. If the Administrator of the EPA grants a case-by-case variance pursuant to 40 CFR 268.5, that variance will simultaneously create the same case-by-case variance to the equivalent requirement of these rules. For purposes of 40 CFR 268.2(j) "EPA" shall be defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR 268.40(b), "Administrator" shall be defined as U.S. Environmental Protection Agency Administrator. In 40 CFR 268.7(a)(9)(iii), "D009" is excluded, (from lab packs as noted in 40 CFR Part 268 Appendix IV.). (3-25-16)( )

**012. HAZARDOUS WASTE PERMIT PROGRAM.**

40 CFR Part 270 and all Subparts, except 40 CFR 270.1(c)(2)(ix), 270.12(a) and 40 CFR 270.14(b)(18), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2015. For purposes of 40 CFR 270.2, 270.5,



270.10(e)(2), 270.10(e)(3), 270.10(f)(2), 270.10(f)(3), 270.10(g), 270.11(a)(3), 270.32(a), 270.32(b)(2), 270.32(c), 270.51, 270.72(a)(5), and 270.72(b)(5), “EPA” and “Administrator” or “Regional Administrator” shall be defined as the U.S. Environmental Protection Agency and the U.S. Environmental Protection Agency Region 10 Regional Administrator respectively. ~~(3-25-16)~~( )

**013. PROCEDURES FOR DECISION-MAKING (STATE PROCEDURES FOR RCRA OR HWMA PERMIT APPLICATIONS).**

40 CFR Part 124, Subparts A, B and G are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2015~~6~~, except that the last sentence of 40 CFR 124.10(b)(1), 40 CFR 124.19, the fourth sentence of 40 CFR 124.31(a), the third sentence of 40 CFR 124.32(a), and the second sentence of 40 CFR 124.33(a) are expressly omitted from the incorporation by reference of each of those subsections. For purposes of 40 CFR 124.6(e), 124.10(b), and 124.10(c)(1)(ii) “EPA” and “Administrator” or “Regional Administrator” shall be defined as the U.S. Environmental Protection Agency and the U.S. Environmental Protection Agency Region 10 Regional Administrator, respectively. ~~(3-25-16)~~( )

**014. (RESERVED)**

**015. STANDARDS FOR THE MANAGEMENT OF USED OIL.**

**01. Incorporation by Reference.** 40 CFR Part 279 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2015~~6~~. For purposes of 40 CFR 279.43(c)(3)(ii) “Director” shall be defined as the Director, U.S.DOT Office of Hazardous Materials Regulation. ~~(3-25-16)~~( )

**02. Used Oil as a Dust Suppressant.** 40 CFR Part 279 contains a prohibition on the use of used oil as a dust suppressant at 279.82(a), however, States may petition EPA to allow the use of used oil as a dust suppressant. Members of the public may petition the State to make this application to EPA. This petition to the State must: (2-11-94)

**a.** Be submitted to the Idaho Department of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706-1255; and (2-11-94)

**b.** Demonstrate how the requirements of 40 CFR 279.82(b) will be met. (2-11-94)

**016. STANDARDS FOR UNIVERSAL WASTE MANAGEMENT.**

40 CFR Part 273 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2015~~6~~. For purposes of 40 CFR 273.32(a)(3), “EPA” shall be defined as the U.S. Environmental Protection Agency. ~~(3-25-16)~~( )

**017. CRITERIA FOR THE MANAGEMENT OF GRANULAR MINE TAILINGS (CHAT) IN ASPHALT CONCRETE AND PORTLAND CEMENT CONCRETE IN TRANSPORTATION CONSTRUCTION PROJECTS FUNDED IN WHOLE OR IN PART BY FEDERAL FUNDS.**

40 CFR Part 278 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2015~~6~~. ~~(3-25-16)~~( )

**018. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARDIZED PERMIT.**

40 CFR Part 267 and all Subparts, except 40 CFR 267.150, are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2015~~6~~. ~~(3-25-16)~~( )

# Overview of Incorporations by Reference for the DEQ Hazardous Waste Program - Docket No. 58-0105-1601 Required by Idaho Code § 67-5223(4)

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Orville Green, Administrator, Waste Management & Remediation Division

Department of Environmental Quality

Rulemaking docket, 58-0105-1601, describes adoption by reference of final federal hazardous waste regulations promulgated with effective dates from July 1, 2015 through June 30, 2016.

Adoption by reference of federal hazardous waste regulations is a routine procedure that DEQ performs annually to: 1) satisfy the consistency and stringency requirements of the Hazardous Waste Management Act (HWMA – Idaho Code, Section 39-4404); 2) meet the legislative intent to avoid the existence of duplicative, overlapping or conflicting state and federal regulatory systems; and 3) provide for DEQ to maintain primacy and authorization to operate the federal Resource Conservation and Recovery Act (RCRA) program in lieu of EPA.

The public notice for the rulemaking appeared in the August 2016 edition of the Idaho Administrative Bulletin. No public hearing was requested or held; the Legislative Services Office and Germane Subcommittees of the Idaho Legislature filed no objections; and no written comments were received from the public.

This proposed rule is neither broader in scope nor more stringent than federal regulations, and does not regulate an activity that is not regulated by the federal government.

The following table summarizes the Code of Federal Regulations sections the DEQ Hazardous Waste Program incorporates by reference. References are listed in the order listed in IDAPA 58, Title 01, Chapter 05 – Rules and Standards for Hazardous Waste. Excluded provisions are specifically identified in the rules.

40 CFR Part	Title	Changes During Past Year?	Impact on Idaho
260	Hazardous Waste Management System	Yes	Yes
261	Identification and Listing of Hazardous Waste	Yes	Yes
262	Standards Applicable to Generators of Hazardous Waste	Yes	Yes
263	Standards Applicable to Transporters of Hazardous Waste	No	-
264	Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities	No	-
265	Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities	No	-
266	Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Facilities	No	-
268	Land Disposal Restrictions	No	-
270	Hazardous Waste Permit Program	No	-
124	Procedures for Decision-Making (State Procedures for RCRA or HWMA Permit Applications)	No	-
279	Standards for the Management of Used Oil	No	-
273	Standards for Universal Waste Management	No	-
278	Criteria for the Management of Granular Mine Tailings (CHAT) in Asphalt Concrete and Portland Cement Concrete in Transportation Construction Projects Funded in Whole or in Part by Federal Funds	No	-
267	Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standardized Permit	No	-

These changes are discussed in more detail below. Links to the pdf files associated with the Federal Register notices are denoted in parentheses as hyperlinks.

The following parts were revised and may have minimal or no impact on Idaho facilities:

**Parts 260, 261 and 262**

- Definition of Solid Waste: EPA has revised several recycling-related provisions (<https://www.gpo.gov/fdsys/pkg/FR-2015-01-13/pdf/2014-30382.pdf>) associated with the definition of solid waste used to determine hazardous waste regulation under Subtitle C of the Resource Conservation and Recovery Act, (RCRA). The purpose of these revisions is to encourage recycling and reclamation while ensuring that hazardous secondary materials (HSM) recycling does not result in increased risk to human health and the environment.

The new requirements create a new definition of “legitimate recycling” of HSM and new requirements that apply to both the generator of HSM and to the recycling of such material whether on site by the generator or by an off-site third party recycler. In addition there is a new “remanufacturing exclusion” for 18 higher-value spent solvents and revisions to the process for existing variances and “non-waste determinations.”

The new definition of “legitimate recycling” requires that where recycling a process employs HSM it must:

- Provide a useful contribution to the recycling process or to a product of the recycling process;
- Produce a valuable product or intermediate that is comparable to a legitimate product or intermediate
- The recycler must manage the HSM as though it is a valuable commodity;

Where the Generator recycles onsite the new rules require the Generator to:

- Contain and label the HSM storage unit;
- Ensure HSM storage units are compatible with HSM;
- Maintain documentation that recycling is legitimate;
- Emergency preparedness and response requirements; and
- Maintain records regarding the percentage of HSM recycled in a 12 month period.

Where the Generator uses an off-site Verified Recycler or Reclamation Facility the new rules require the Generator, in addition to the requirements above, to:

- Notify EPA or Authorized State;
- Send HSM only to a Verified Recycler or Reclamation Facility; and
- Maintain records of off-site shipments of HSM and confirmation receipts for 3 years.

To become a Verified Recycler/Reclamation Facility the new rules require the facility to:

- Have a RCRA Part B Permit which addresses the HSM reclamation; or

- Obtain a Variance from EPA or Authorized State for HSM recycling/reclamation.

To Obtain a Variance the Reclaimer must:

- Demonstrate the recycling is legitimate per new regulatory definition;
- Have financial assurance in place to properly manage HSM if the facility closes;
- Not have had any formal enforcement actions for RCRA violations in the previous 3 years and not be classified as a significant non-complier with RCRA subtitle C;
- Meet emergency preparedness and response requirements including training and equipment;
- Properly manage the residuals from the reclamation; and
- Address risk to nearby communities from potential releases of the HSM

Remanufacturing Exclusion- The remanufacturing exclusion encourages the recycling of 18 higher-value hazardous spent solvents used for reacting, extracting, blending, or purifying chemicals in the pharmaceutical, organic chemical, plastics and resins, and the paint and coatings sectors. Conditions for the Remanufacturing Exclusion include the following new requirements:

- Both the generator and remanufacturer must notify EPA or authorized State;
- The generator and remanufacturer must jointly develop and maintain a remanufacturing plan;
- Both generators and remanufacturers must maintain record of shipments and confirmation receipts for 3 years;
- The spent solvents must be managed in RCRA-equivalent tanks and containers, including meeting applicable air emission standards; and
- Spent solvents managed under this exclusion are subject to the prohibition against speculative accumulation.

Revisions to Existing Variances and Non-Waste Determinations- Revisions include:

- Requiring facilities to send a notice to EPA or Authorized State and potentially re-apply for a variance in the event of a change in how an HSM meets the variance criteria;
- Establishing a fixed term not to exceed 10 years for variance and non-waste determinations, at the end of which facilities must re-apply;
- Requiring facilities to re-notify every 2 years with updated information;
- Revising the criteria for a partial reclamation variance to clarify when the variance applies and require that all criteria for the variance must be met; and
- For non-waste determinations, requiring that petitioners demonstrate why the existing solid waste exclusion would not apply to their HSM.

- Finally, the 2015 DSW includes a requirement for the National Response Center to be notified in certain emergency situations. The Idaho rules have been revised to ensure the State Communications Center (State Comm.) is also notified in these situations. This is identical to current requirements for hazardous waste generators and TSDFs.
- According to the federal register, these revisions are more stringent than those promulgated under the 2008 Definition of Solid Waste (DSW) rule. Any authorized states which have adopted the 2008 DSW final rule must modify their programs to be consistent with these new requirements. Idaho adopted the 2008 DSW final rule in March 2009. Therefore, in order to meet the requirement that state programs be no less stringent than the federal requirements, adoption of the 2015 DSW final rule is required.
- There is currently only 1 facility in Idaho using an HSM exclusion (generator-controlled) contained in the 2008 DSW final rule that will be impacted by the new requirements.
- **Coal Combustion Waste Rule:** In this rule, EPA is regulating disposal of residuals from coal combustion at electric utilities under solid waste regulations authorized by Subtitle D of RCRA (<https://www.gpo.gov/fdsys/pkg/FR-2015-04-17/pdf/2015-00257.pdf>). This rule establishes criteria for the safe disposal of coal combustion residuals in landfills and surface impoundments under Subtitle D of RCRA, it also contains a revision to the section of RCRA Subtitle C regulations that identifies solid wastes which are not hazardous wastes and are therefore excluded from regulation under Subtitle C. Impacts from this rule in Idaho should be minimal since there currently are no coal fired power plants located in Idaho. The reason for this rulemaking is to incorporate by reference clarifying exclusionary language for coal combustion residuals in the hazardous waste regulations authorized by RCRA Subtitle C, in 40 CFR Part 261.4(b)(4).
- **Technical Corrections:** EPA is also correcting typographical errors in the original final rule, published April 17, 2015, which resulted in 2 different effective dates in the regulatory text for the final CCR rule (<https://www.gpo.gov/fdsys/pkg/FR-2015-07-02/pdf/2015-15913.pdf>). The reason for this rulemaking is to provide accurate information for the incorporation by reference of the clarifying exclusionary language for coal combustion residues in the hazardous waste regulations authorized by RCRA Subtitle C, in 40 CFR Part 261.4(b)(4).
  - This rule corrected the effective date of the CCR rule, promulgated under Subtitle D of RCRA, from October 14, 2015 to October 19, 2015.
  - No Idaho facilities are currently burning coal to produce electricity.

- Transboundary Shipments Rule: EPA is amending certain existing regulations that apply to transboundary movement of hazardous waste among the Organization for Economic Cooperation and Development (OECD) Member countries (<https://www.gpo.gov/fdsys/pkg/FR-2015-07-02/pdf/2015-16400.pdf>) as promulgated under the hazardous waste provisions of RCRA. Specifically, EPA is updating the list of OECD member countries to add Estonia, Israel, and Slovenia. The reason for this rulemaking is to incorporate by reference the changes in 40 CFR 262.58.
  - EPA does not authorize states to administer federal import/export functions in any section of the RCRA hazardous waste regulations and must be notified of all imports/exports of hazardous waste.
  - The addition of these three countries to the OECD member list should have no impact on Idaho facilities.