

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Thursday, January 21, 2016

TIME: 3:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Heider, Vice Chairman Nuxoll, Senators Lodge, Hagedorn, Martin, Lee, Harris, Schmidt and Jordan

ABSENT/ EXCUSED: None

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** called the meeting of the Senate Health and Welfare Committee (Committee) to order at 3:02 p.m.

INTRODUCTORY REMARKS: **Chairman Heider** welcomed former Senator John Tippetts, Director, Department of Environmental Quality (DEQ), who was a member of this Committee last year. **Director Tippetts** stated his pleasure to be appearing before the Committee. **Director Tippetts** introduced Barry Burnell, Administrator of the Water Quality Division; Tiffany Floyd, Administrator of the Air Quality Division; Orville Green, Administrator of the Waste Management and Remediation Division; Matt Alvarado and Carl Brown from the DEQ; and, Lisa Carlson, Deputy Attorney General assigned to the DEQ.

Director Tippetts discussed the purpose and process for the incorporation by reference of federal regulations. In order for the DEQ to maintain primacy over certain federal programs, the DEQ must implement regulations that are at least as stringent as the corresponding federal regulations. And, unless otherwise authorized by the Legislature, Idaho law requires that DEQ regulations be no more stringent than the corresponding federal regulations. The DEQ incorporates federal regulations by reference into Idaho's corresponding regulations and, when authorized, also promulgates Idaho-specific regulations. Both types of regulations are necessary for the DEQ to operate its State programs.

Director Tippetts stated that when federal regulations are changed, the DEQ must update the incorporation by reference in Idaho's corresponding regulations. In the past, the DEQ asked the Legislature to trust that the changes made by the federal government were appropriate for Idaho. This year, the DEQ has provided the Committee with a summary of the changes in the federal regulations that are proposed to be incorporated by reference into Idaho's corresponding regulations. He welcomed any feedback from the Committee. **Director Tippetts** stated that the dockets presented by the DEQ primarily deal with the incorporation of federal regulations. He noted that, due to time constraints, the DEQ presenters will only give a brief summary of the federal changes to be incorporated by reference; more information can be found in the documents provided to the Committee (see attachment 1).

Chairman Heider asked Director Tippetts to explain the importance of Idaho having primacy over federal programs. **Director Tippetts** stated that, although there are some costs, DEQ primacy over federal programs (i) allows Idahoans to address regulatory issues with someone in Idaho, (ii) allows the DEQ to help Idahoans to understand and comply with the law and (iii) allows to the DEQ to enforce the law.

Senator Martin inquired about the timetable for water primacy. **Director Tippetts** responded that the Legislature passed a statute in 2014 mandating that an application must be submitted to the Environmental Protection Agency (EPA) for primacy over the program that governs discharges to surface waters. **Director Tippetts** indicated that Mr. Burnell and his team are on target to submit the required application by September 1, 2016.

**PASSED THE
GAVEL:**

Chairman Heider passed the gavel to Vice Chairman Nuxoll to conduct the rules review.

**DOCKET NO.
58-0108-1501**

Rules of the Department of Environmental Quality related to Public Drinking Water Systems. Barry Burnell, Administrator of the DEQ Water Quality Division, presented this docket (see attachment 1 - tab 1).

Mr. Burnell stated that the proposed rule was initiated to incorporate the federal revised total coliform rule into State regulations to ensure that Idaho maintains primacy in implementing the federal drinking water program under the Safe Drinking Water Act. Additionally, incorporation of this federal rule would result in lower monitoring costs for owners of public water systems and would allow Idaho to issue waivers where appropriate. If this rule is not incorporated into Idaho regulations, the EPA will implement the federal rule and no waivers would be allowed. **Mr. Burnell** then reviewed the rulemaking process. He stated that the proposed rule was first published in April 2015 and negotiated rulemaking meeting was held on April 22, 2015. **Mr. Burnell** confirmed that representatives from municipalities, industry and water policy groups participated in the rulemaking meeting. The proposed rule was modified by the DEQ based upon the comments received during the rulemaking meeting and the revised rule was published on May 18, 2015. **Mr. Burnell** stated that no comments were received for the revised rule; nor did the DEQ receive comments upon final publication of the revised rule. **Mr. Burnell** said that the proposed rule would require the regulated community to update their sampling plan at their own costs and pay for certain assessments if total coliform or *E.coli* is detected. **Mr. Burnell** reported that approximately \$30,000 of initial costs would be borne by the public water systems and, each year thereafter, the public water systems would save approximately \$88,000 as a result of reduced monitoring. **Mr. Burnell** reported that no controversial issues were raised during the negotiated rulemaking. **Mr. Burnell** noted that, while meeting federal stringency requirements, the DEQ negotiated certain flexible issues including, (i) identification of approved parties for level 2 assessments when *E.coli* is detected in the drinking water system, (ii) waivers for certain requirements for seasonal systems and (iii) reduced total coliform monitoring.

Summarizing the major changes of the proposed rule, **Mr. Burnell** stated that the intent of the proposed rule is to provide increased public health protection by reducing the pathways that pathogens can enter into drinking water systems. More specifically, this proposed rule changes the maximum contaminant level (MCL) to *E.coli*; total coliform, which was the MCL, is now used only as an indicator. The DEQ is incorporating the Code of Federal Regulations (CFR) Part 141 except for Subpart X, which deals with aircraft drinking water regulations implemented by the EPA, and portions of Subpart Y that deal with annual monitoring provisions. Finally, **Mr. Burnell** reported that implementation of the proposed rule would not result in additional cost to the DEQ.

Vice Chairman Nuxoll asked how many primacies there are for water. **Mr. Burnell** responded that there is primacy for the drinking water program and the surface water program, and the DEQ is currently seeking primacy for the Idaho Pollutant Discharge Elimination System (IPDES). **Vice Chairman Nuxoll** stated her understanding that it is a one-time \$30,000 cost for the public water systems the first year and after that there is an \$88,000 savings per year for the next three years. **Mr. Burnell** concurred. **Senator Hagedorn** asked what the impact will be for small, rural users. **Mr. Burnell** responded that the Idaho Rural Water Association, which represents many of the small water systems in Idaho, was supportive of the rule.

Mr. Burnell explained each of the pending rule changes for **Docket No. 58-0108-1501**. First, he reviewed the CFR incorporation by reference. Second, **Mr. Burnell** reviewed modifications to defined terms including, (i) clean compliance history, (ii) level 1 assessment, (iii) level 2 assessment, (iv) protected water source, (v) sanitary defects and (vi) seasonal systems. Third, **Mr. Burnell** discussed the revisions to the total coliform assessment criteria. Fourth, **Mr. Burnell** reviewed additional changes regarding filtration and tracer compound requirements. Fifth, **Mr. Burnell** reviewed coliform treatment triggers, assessment requirements and approved parties for level 2 assessments. Finally, **Mr. Burnell** discussed flushing for disinfection and additional seasonal system requirements.

Vice Chairman Nuxoll asked the Committee members if they had any questions.

Referring to the newly added definition for "protected water source," **Senator Lee** asked Mr. Burnell to clarify how "contamination history" is used to identify protected water sources – how often is the source tested and how long must it remain uncontaminated to be considered a protected water source. **Mr. Burnell** noted that "contamination history" was one of three factors that could be used to identify a protected water source. He indicated that different contaminants required different sampling intervals – from monthly to every three years.

Senator Harris asked if the number of level 2 cases, less than ten per year, is changing from year to year. **Mr. Burnell** stated that ten is an average and he did not have actual trend numbers.

Referring to the start-up procedures for seasonal systems subject to certain monitoring and analytical requirements, **Senator Hagedorn** asked how the proposed rule would differentiate between a small cabin and a larger hotel-style lodge. **Mr. Burnell** referred Senator Hagedorn to the definition of "public drinking water system" and reviewed the differentiation between "community" and "noncommunity" water systems; he noted the further differentiation between "nontransient" and "transient" noncommunity water systems.

Vice Chairman Nuxoll asked for a definition of coliform. **Mr. Burnell** answered that coliform is a type of bacteria that generally indicates contamination in a water system, but *E.coli* specifically indicates an fecal contamination from warm-blooded animals, which suggests an acute human health problem.

Referring to revised rates for slow sand filtration, **Senator Schmidt** noted that the revisions allowed the department to approve alternate filtration rates and he inquired as to why the DEQ may need to approve alternate rates. **Mr. Burnell** answered that there are always engineering elements to a sand filter so they may vary from the .01 gallon per square foot rate based upon temperature. Any variance would be based on sound engineering principles to be protective of public health. **Senator Schmidt** asked if there are any water systems that might be in jeopardy given the proposed change to the rule. **Mr. Burnell** responded no.

Referring to the addition of "flushing" within the quantity and pressure requirements for public water systems, **Senator Lee** inquired whether "flushing" would be appropriate for ground water systems. **Mr. Burnell** stated that flushing is an option for ground water systems.

MOTION: There being no more questions, **Senator Martin** moved to approve **Docket No. 58-0108-1501**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 58-0101-1501 **Rules of the Department of Environmental Quality related to the Control of Air Pollution in Idaho.** **Tiffany Floyd**, Administrator of the DEQ Air Quality Division, introduced Carl Brown, Air Quality Rules Coordinator and Paula Wilson from the Attorney General's office, and presented this docket (see attachment 1 - tab 2 and attachment 2).

Ms. Floyd stated that the purpose of the DEQ Air Quality Division is to protect public health and the environment and meet the requirements of the Clean Air Act. Specifically, the DEQ implements Idaho's state air quality program by monitoring pollution levels throughout the state to demonstrate that Idaho is complying with National Ambient Air Quality Standards. Also, the DEQ conducts outreach and education about air quality rules for industry, issues air quality permits, conducts inspections and ensures that industry is complying with the air quality rules.

First, **Ms. Floyd** stated that the proposed rule will incorporate changes made to federal regulations by reference into Idaho's corresponding regulations. Incorporation of federal regulations by reference (i) allows DEQ operate or to implement DEQ's Air Quality program in lieu of EPA implementation and (ii) provides one set of regulations for industry to follow. **Ms. Floyd** stated that the proposed rule incorporated 38 changes made to federal regulations; more information can be found in the documents provided to the Committee (see attachment 1 - tab 2).

Second, **Ms. Floyd** noted that there were two other minor revisions in the proposed rule, including (i) deleting obsolete sections and (ii) clarifying permitting language. Specifically, **Ms. Floyd** reported that the EPA removed certain provisions related greenhouse gas applicability definition for major sources from federal regulations to comply with a recent U.S. Supreme Court decision; and, for consistency, the same provision was being deleted from Idaho's regulations. Additionally, in connection with transportation conformity, the EPA simplified some of its standards and focused on coordination among transportation partners. **Ms. Floyd** reported that Idaho already implements those coordination requirements as specified by federal regulations; and, for consistency, obsolete provisions were being deleted from Idaho's regulations. Finally, **Ms. Floyd** reported that changes were being made to the procedures and requirements for permits to construct language to clarify that there are two different permitting scenarios: (i) permits in an area that meet the national ambient air quality standards and (ii) permits in an area that do not meet the national ambient air quality standards. **Ms. Floyd** confirmed that these clarifications did not change how the DEQ implements the permits to construct rules.

Third, **Ms. Floyd** stated that this proposed rule did not go through negotiated rulemaking, but the DEQ did hold a public comment period and a public hearing and did not receive any comments. The Idaho Board of Environmental Quality adopted the rule in November 2015.

Vice Chairman Nuxoll asked the Committee members if they had any questions.

Senator Martin inquired about the air quality status in Ada County. **Ms. Floyd** said that Ada County is currently meeting all of the national ambient air quality standards. Specifically, **Ms. Floyd** noted that the national standard for ozone was recently lowered to 70 parts per billion; and Ada County ozone levels are currently at 68 parts per billion, just within the federal limits.

Referencing the overview of incorporations by reference for the DEQ air quality program (see attachment 1 - tab 2), **Vice Chairman Nuxoll** asked Ms. Floyd to explain the specific impact of the federal regulations on Idaho facilities and to discuss whether any federal regulations would be effective retroactively. **Ms. Floyd** responded that, under Part 60, there will be an impact to Idaho facilities related to the following three actions: (i) the updated opacity monitoring requirements may apply to a facility that produces emissions from a stack, (ii) new requirements for the oil and gas sector related to well completion and storage vessels would be included in applicable air quality permits and (iii) the residential wood heater rule regarding limits for particulate matter released applies mainly to wood stove manufacturers. **Vice Chairman Nuxoll** asked if Idaho maintained primacy for air quality. **Ms. Floyd** said that the state does have primacy for the entire air quality program in Idaho.

MOTION: There being no more questions, **Senator Lodge** moved to approve **Docket No. 58-0101-1501**. **Chairman Heider** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 58-0105-1501 **Rules of the Department of Environmental Quality related to Standards for Hazardous Waste.** **Orville Green**, Administrator of the DEQ Waste Management and Remediation Division, introduced Matt Alvarado, Rules Analyst, and presented this docket (see attachment 1 - tab 3 and attachment 3).

Mr. Green explained that **Docket 58-0105-1501** describes the adoption by reference of the final federal hazardous waste regulations; more detailed information can be found in the documents provided to the Committee (see attachment 1 - tab 3). **Mr. Green** noted that adoption by reference is a routine procedure that the DEQ performs annually to (i) satisfy consistency and stringency requirements of the Hazardous Waste Management Act (HWMA); (ii) meet the legislative intent to avoid duplicative, overlapping or conflicting state and federal regulatory systems; and (iii) provide for DEQ to maintain primacy and authorization to operate the Resource Conservation and Recovery Act (RCRA) program in lieu of the EPA.

Mr. Green stated that public notices of rulemaking were published in the August and December 2015 editions of the Idaho Administrative Bulletin. No public hearing was requested or held, and no written comments were received. **Mr. Green** reported that, on November 18, 2015, the Idaho Board of Environmental Quality approved the pending rule, which is neither broader in scope nor more stringent than federal regulations and does not regulate any activity that is not regulated by the federal government.

Mr. Green then reviewed the three primary changes made in the proposed rule:

1. The EPA is establishing the authority for the voluntary use of electronic manifests as a means to track off-site shipments of hazardous waste from the generator's site to the site of disposition. The rule establishes the framework for the e-Manifest system, which is not yet implemented. Certain portions of this rule are non-delegable to the states and must be implemented by the EPA. The e-Manifest Act supersedes any requirements under state law that are less stringent than the e-Manifest requirements and any requirements that are inconsistent with the e-Manifest requirements.
2. The EPA is revising certain export provisions of the Cathode Ray Tube (CRT) rule, which applies to items like old televisions and computer screens. The proposed rule will have no impact on individuals who choose to recycle those items; it only impacts exporters by requiring better tracking of CRT exports for reuse and recycling. The EPA does not authorize states to administer the federal import/export functions in any section of RCRA hazardous waste regulations. However, the DEQ is required to adopt these provisions to maintain an equivalency with the federal program.

3. The EPA is revising regulations associated with comparable fuels and gasification exclusions. A recent ruling issued by the U.S. Court of Appeals for the District of Columbia mandated the vacatur of these exclusions because the fuels produced from solid waste and hazardous waste respectively remain solid waste and hazardous waste and cannot be excluded from regulation. No Idaho facilities utilized either of these exclusions.

Mr. Green then reviewed the technical changes within the proposed rule. Finally, **Mr. Green** stated that all of the federal regulatory changes could have an impact on Idaho, and noted that the impact for the e-Manifest system will be positive.

Vice Chairman Nuxoll asked the Committee members if they had any questions.

Senator Lodge thanked the presenters for providing the DEQ overviews and summaries for each docket. It is one of the best presentations she has seen.

MOTION: There being no more questions, **Senator Lee** moved to approve **Docket No. 58-0105-1501**. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Vice Chairman Nuxoll passed the gavel back to Chairman Heider.

Director Tippets recognized Paula Wilson for her work on these presentations.

ADJOURNED: There being no further business, **Chairman Heider** adjourned the meeting at 4:21 p.m.

Senator Heider
Chair

Karen R. Westbrook
Secretary

Twyla Melton
Assistant