

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Tuesday, January 17, 2017

TIME: 3:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Vice Chairman Souza, Senators Martin, Lee, Harris, Anthon, Agenbroad, Foreman, and Jordan

ABSENT/ EXCUSED: Senator Lee

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 3:00 p.m.

PASSED THE GAVEL: Chairman Heider passed the gavel to Vice Chairman Souza to conduct the rules review.

DOCKET NO. 58-0105-1601 **Rules and Standards for Hazardous Waste. Matt Alvarado**, Hazardous Waste Regulation and Policy Coordinator for the Waste and Mediation Division at Department of Environmental Quality (DEQ) presented this docket. He described the 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 was a routine procedure that DEQ performed annually to: 1.) satisfy the consistency and stringency requirements of the Hazardous Waste Management Act; 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 Environmental Protection Agency (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, and no objections and no written comments were received from the public. This proposed rule was neither broader in scope nor more stringent than federal regulations and did not regulate an activity that was not regulated by the federal government. This docket included four new rules that have been promulgated since the last incorporation, a new incorporation by reference, a new definition of solid waste rule covering the disposal of Coal Combustion Residuals (CCR) from electric utilities, technical corrections to the effective date of the CCR rule and a rule covering transboundary hazardous waste shipments.

Mr. Alvarado briefly described the contents of these new rules. The Definition of Solid Waste (DSW) changed as, EPA revised several recycling related provisions associated with the DSW, which are used to determine the hazardous waste regulations under Subtitle C of the RCRA. Specifically, the new DSW rule withdraws the transfer based exclusion that was in the existing regulation and replaced it with the verified recycler exclusion. The new requirements also created a new definition of legitimate recycling of Hazardous Secondary Material (HSM). The new requirements apply to both generators of HSM and recycling of such material, whether on-site by the generator or by an off-site third party recycler. This rule included a new "remanufacturing exclusion" for 18 higher-value spent solvents that included revisions to the process for existing variances and "non-waste determinations." The new DSW rule included a requirement for the National

Response Center to be notified in certain emergency situations. The Idaho rules have been revised to ensure the state communication center is also notified in these situations. These requirements were identical to current Idaho Rules for Hazardous Waste Generators and for treatments towards in-disposal facilities in certain emergency situations. The new DSW rule is more stringent than the State's current DSW rule and, therefore, adoption is required by the federal government in order to meet the stringent requirements for state programs. Currently, only one facility in Idaho is using an HSM recycling exclusion and a generator controlled exclusion for recycling solvents on site. Therefore, there should be no impact on the regulatory community from this new rule in Idaho.

Mr. Alvarado next explained the Coal Combustion Waste (CCR) rule definition by stating EPA had regulated disposal of residuals from coal combustion at electric utilities under solid waste regulations authorized by Subtitle D of RCRA. The rules contained a revision to RCRA Subtitle C, hazardous waste regulation, which identified solid waste was not hazardous and therefore excluded from regulations under Subtitle C. Impacts from this rule in Idaho should be minimal because currently there are no coal-fired electric plants located in Idaho. He further explained the technical corrections to the CCR rule stating this docket simply corrected typographical errors in the original final rule which resulted in two different effective dates being published.

Mr. Alvarado explained the Transboundary Shipment rule, stating EPA was amending certain existing regulations that applied to transboundary movement of hazardous waste among the Organization for Economic Cooperation and Development (OECD) member countries. This revised the list of OECD member countries to include Estonia, Israel and Slovenia. EPA did 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 RCRA hazardous waste. The non authorized state programs were required to adopt import/export provisions to maintain consistency with federal requirements. The addition of these three countries to the OECD member list should have no impact on Idaho facilities.

Senator Martin emphasized how important the word "primacy" was in the testimony. He further stated primacy was one of the most important things which could be discussed in the State of Idaho and he appreciated the efforts of DEQ and the efforts of former Senator John Tippets, now Director of DEQ who was in the audience.

Mr. Alvarado thanked everyone and pointed out it is important DEQ has adopted and brought on the program they are enforcing in the State, so DEQ is a voice for Idaho in this process rather than the federal government being in charge of the regulations.

MOTION: There being no more questions, **Senator Martin** moved to approve **Docket No. 58-0105-1601**. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 58-0101-1602 **Rules for the Control of Air Pollution in Idaho.** **Tiffany Floyd**, Air Quality Division Administrator at Department of Environmental Quality (DEQ), introduced herself and explained rulemaking has been initiated to delete Idaho Administrative Procedures Act (IDAPA) Section 582. In reviewing the rules, DEQ discovered Section 582 was outdated and no longer applicable. **Ms. Floyd** informed the Committee northern Ada County was designated non-attainment (not meeting NAAQS) for Particulate Matter 10 in 1990. In the late 1990s, EPA attempted to assist states with non-attainment planning processes and transportation requirements, but was sued in 2001 and lost. As part of the court settlement, an interim measure was adopted to ensure transportation projects could legally still go forward until DEQ developed a maintenance plan for the non-attainment area.

DEQ submitted the maintenance plan, and it was approved by EPA in 2003. DEQ did not conduct negotiated rulemaking, as DEQ felt it was not feasible because of the nature of this matter. However, DEQ held a public comment period and a public hearing.

Senator Jordan questioned if this section was specific to the non-attainment in 1990, if there was another non-attainment, would new rules applicable to that specific situation be implemented at the time. **Ms. Floyd** replied that if a new non-attainment area came about and DEQ is designated for another pollutant in that same process, then DEQ will have transportation planning requirements not specific to Ada County.

MOTION: There being no more questions, **Senator Agenbroad** moved to approve **Docket No. 58-0101-1602**. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 58-0101-1603 **Rules for the Control of Air Pollution in Idaho.** **Tiffany Floyd**, Air Quality Division Administrator at DEQ, presented this docket. She explained the purpose of this rulemaking was to ensure Idaho's rules remain consistent with federal regulations. The rules for control of air pollution are updated annually to maintain consistency with federal regulations implementing the Clean Air Act. This proposed rule incorporated by reference federal regulations revised in July 1, 2016. Adoption of federal regulations was necessary for EPA approval of Idaho's Title V operating permit program and state primacy of the Clean Air Act programs. This rule allows DEQ to keep its rules up to date with federal changes and simplified compliance for the regulated community. As required by Idaho Code, DEQ prepared a brief overview detailing the latest revisions being proposed for incorporation. **Ms. Floyd** stated if upon review the Committee required any detail on a specific rule or update, she could schedule a time with the appropriate staff to discuss further. **Ms. Floyd** further highlighted some of the changes which most impact Idaho. The NAAQS for ozone was reduced from 75 to 70 parts per billion. The Treasure Valley had been affected by ozone but is currently in compliance with the new standard. The new ozone standard will have an impact on how the crop residue burn program is implemented.

Ms. Floyd explained there were also a number of updates associated with DEQ's permit program that will have an impact on Idaho facilities. Three types of facilities in particular are power plants, phosphate fertilizer plants, and the oil/gas industry. **Ms. Floyd** stated EPA promulgated two rules to control carbon dioxide emissions from power plants, one for new facilities and the other for existing facilities, both of which are currently being litigated. The existing facilities in Idaho which are impacted are Rathdrum Power and Idaho Power's Langley Gulch natural gas plant. **Ms. Floyd** mentioned the phosphate fertilizer plants update added new requirements for monitoring and record-keeping and updated emission requirements for certain processes within those facilities. The new monitoring and record-keeping requirements would affect Idaho facilities such as Simplot in Pocatello and Agrium in Soda Springs. **Ms. Floyd** explained methane was added as a regulated pollutant for oil and natural gas wells, and the update added requirements for additional equipment in their production chains. This rule affects Alta Mesa and any new facility built in Idaho. DEQ did not conduct negotiated rulemaking because it was not feasible due to the nature of this rule and because DEQ has no discretion with respect to adopting federal regulations. DEQ held a public comment period and a public hearing and did not receive any comments.

Senator Harris asked how companies such as Agrium and Simplot are monitoring the new regulations. **Ms. Floyd** explained mercury and fluoride are monitored by Continuous Emissions Monitoring (CEM) to ensure they meet the requirements. The companies maintain the records when taking samples of the tests for those pollutants and provide them to DEQ. **Senator Harris** asked if this change will help with any future litigation. **Ms. Floyd** replied if DEQ was asked about the mercury emissions and the accuracy, DEQ would have the information and documentation that DEQ conducted the proper testing as outlined in the federal regulations.

MOTION: There being no more questions, **Senator Harris** moved to approve **Docket No. 58-0101-1602**. **Chairman Heider** seconded the motion. The motion carried by **voice vote**.

RS 24817

Relating to Crop Residue Burning. **Tiffany Floyd**, Air Quality Division Administrator at DEQ, explained **RS 24817**. The proposed amendment is to Idaho Code § 39-114, which relates to Crop Residue Burning (CRB). In 2008, the Legislature enacted Idaho Code § 39-114, which required DEQ to assess air quality conditions before approving the burning of crop residue. DEQ implemented these requirements at IDAPA 58.01.01.618 through 58.01.01.624. Section 621 requires that before approving a burn in the program, DEQ must evaluate a number of criteria such as: proximity to sensitive groups; other burning activity; weather conditions; and pollutant concentrations.

Ms. Floyd informed the Committee DEQ requires that pollutant concentrations not exceed 75 percent of any NAAQS, essentially creating a backstop or threshold to ensure that DEQ was not approving burns that caused a violation of NAAQS. Next year the implementation of the current program will become more problematic due to the ozone standard for two reasons: 1.) EPA reduced the standard for ozone from 75 to 70 parts per billion (ppb) making it difficult to approve burn days; and 2.) there will be days when ozone concentrations could be high enough to limit crop residue burns on what would otherwise be a "good" burn day, meaning a day when burning is not predicted to cause a violation of any NAAQS. That conflict was a significant issue for many in the agricultural sector and an issue for the grass seed growers in the northern part of the state because ozone is one of the drivers that determined whether a crop residue burn can or cannot occur on a specific day.

Ms. Floyd stated to address these limitations, DEQ engaged in negotiated rulemaking. Based on those meetings, DEQ proposed to increase the 75 percent threshold to 90 percent for ozone. DEQ is confident there will be enough buffer to ensure the ozone standard is not exceeded from a crop residue burn. The goal of the CRB program was to protect public health and allow crop residue burning as an agricultural practice. DEQ believes the new threshold of 90 percent will meet these goals.

Ms. Floyd said this program change will require EPA approval. Therefore, to account for the time needed to obtain EPA approval, the change will be implemented in two stages. For the 2017 burn season, the ozone threshold will remain at the current level or 75 percent of the 2008 ozone standard. On February 28, 2018, which is the expected date of EPA approval, the 90 percent threshold of the 2015 ozone standard will become effective. Lastly, this change will not have any direct fiscal impact on the state and the change will not alter resources used by DEQ to implement the CRB program, nor will the current crop residue burn fee structure outlined in Idaho Code § 39-114 be changed.

Senator Jordan asked if approval is anticipated in February 2018. **Ms. Floyd** explained EPA made the change to the ozone standard reduction in late October 2015, when the evaluation occurred. As far as the February 2018 deadline, DEQ can work closely with EPA to demonstrate the change is still protective as DEQ's current program is within the 75 percent.

Senator Jordan asked if there was an emergency clause and why was this bill not addressed in the earlier session. **Ms. Floyd** explained if this legislation is approved, DEQ will conduct rulemaking to conform the rules to the new statute. It is important to change the statute first, and in 2018, DEQ will present the rule change to mirror the statute. **Senator Jordan** asked what happens if this bill is not approved. **Ms. Floyd** explained if the bill is not approved, the existing program with 75 percent of the NAAQS would remain in effect.

Senator Martin asked if a farmer who wanted to burn his ditch banks needed to get pre-approval from DEQ. **Ms. Floyd** explained pre-approval was specific to crop residue burning and would not apply to ditch bank burning.

Senator Martin referring to the last page of this docket asked about an emergency existing and who declares the emergency. **John Tippets**, Director of DEQ, was recognized to explain the legislation has a specified default effective date. There is an emergency clause to make the legislation effective immediately rather than waiting until July 1 because DEQ expects EPA to approve the new rule prior to February 28, 2018, and it will allow Sections 2 and 3 to be in full force and effect on and after February 28, 2018.

Chairman Heider asked if burning depended on the amount of crop residue or the amount of burning that took place in a day and how DEQ would delegate the days for burning. **Ms. Floyd** answered that DEQ prepares a list of farmers who apply for those burns and based on the number of acres, farm location, pollution levels, DEQ works with the farmers to address the number of burns and then decides on the burn days.

Senator Foreman asked if DEQ is unable to go to the 90 percent standard, assuming it is going to have a negative impact on the ability to burn, how severe an impact would occur. **Ms. Floyd** explained if not approved at 90 percent, then DEQ would implement at 75 percent, but the additional average number of days could be affected depending on the location. For instance, if the farm is located in South Idaho, then roughly 60 days and in North Idaho roughly 30 days would be affected. It is difficult for DEQ to burn under these circumstances, and a potential increase of "no burn days" is important to DEQ.

Senator Foreman asked when the burn season occurs and the length of the total burn season. **Mary Anderson**, Air Quality Program Manager who oversees DEQ's CRB program, explained a specific spring burn season occurs from March through May and the fall burning season starts mid July through mid October.

MOTION: There being no more questions, **Senator Anthon** moved to send **RS 24817** to print. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

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

ADJOURNED: There being no further business at this time, **Chairman Heider** adjourned the meeting at 3:35 p.m.

Senator Heider
Chair

Jeanne Jackson-Heim
Secretary

Arti Clark
Assistant Secretary