

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, March 05, 2018

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Bair, Vice Chairman Siddoway, Senators Brackett, Heider, Vick, Bayer, Johnson, Stennett, 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 Bair** called the meeting of the Senate Resources and Environment Committee to order at 1:30 p.m.

MINUTES APPROVAL: **Senator Vick** moved to approve the Minutes of February 19, 2018. **Vice Chairman Siddoway** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT CONSIDERATION: **Senator Johnson** moved to send the gubernatorial appointment of David Groeschl to the Oil and Gas Conservation Commission to the floor with recommendation that he be confirmed by the Senate. **Senator Brackett** seconded the motion. The motion carried by **voice vote**. Chairman Bair will be the floor sponsor.

GUBERNATORIAL REAPPOINTMENT HEARING: **Chairman Bair** welcomed Brent Baker, Athol, Idaho, and said he was reappointed to the Lake Pend Oreille Basin Commission (Lakes Commission) to serve a term commencing July 24, 2017 and expiring July 24, 2020. He then asked Mr. Baker to tell the Committee about the activities and accomplishments of the Lakes Commission the past four years.

Mr. Baker stated he has been with the Lakes Commission since it was founded and is pleased with what the Lakes Commission has been able to do. He gave credit to the Lakes Commission's Chairman, Ford Elsaesser, for his leadership. **Mr. Baker** said they serve multiple functions. One is to be a bit of a watchdog because, as the nature of the economy has changed over the decades, the recreation values of the waterways have become the core of the economy.

Mr. Baker said the Lakes Commission is also a fact-finding body. They bring in different agencies, have open hearings under the public meeting laws, and discuss the various issues so the public can have all the facts. **Mr. Baker** indicated that the meetings are well-attended. Most important is the advisory capacity of the Lakes Commission. After all questions have been asked and answered, recommendations are made after deliberation.

DISCUSSION: **Senator Stennett** inquired of the business that Mr. Baker is now engaged in. **Mr. Baker** said he works with remodelers and home builders to refine their processes and help them become more profitable. Prior to that, he was a building contractor, developer, investor, and consultant with over 40 years experience in construction and 30 years in investment and development. Projects have included light commercial and industrial, residential, recreational, and agricultural. Investment activities have included a mixed portfolio of active business interests, real estate, and securities.

Senator Siddoway asked about the disciplines of the lake that the Lakes Commission has to manage and, if there is a conflict, which takes precedence. **Mr. Baker** said there are several things to consider to achieve a balance. They are: upstream interests; downstream interests; power production interests; fish and game interests; and the interests of the Kalispell Tribe. However, endangered species have precedence. The water level issue must also be considered. **Mr. Baker** said that everybody realizes that sacrifices have to be made and they seem to have found that middle ground, as things seem to be fairly stable.

Mr. Baker said there is some concern with the current renegotiations of the Columbia River treaty with Canada. He said the Lakes Commission appreciates the support that they have gotten from the Legislature and the Governor to help strengthen the process to protect the interests in the upcoming negotiation.

Chairman Bair thanked Mr. Baker for appearing before the Committee. **Chairman Bair** then welcomed Marc Brinkmeyer of Coeur d'Alene, Idaho.

**GUBERNATORIAL
REAPPOINTMENT
HEARING:**

Mr. Brinkmeyer stated he wanted to echo what Mr. Baker said regarding the Lakes Commission. They are a group with no authority, but have managed to listen and be involved in the community to have some respect from the people in the area. One of the leading benefits of the group was action on milfoil, as well as leadership in the invasive species issue, with the inspections of watercraft.

Mr. Brinkmeyer said tribal issues are matters of interest and are something that they can learn from. The lake level is a hot topic, especially during the recreational time of the year. The winter pool is another issue that has to be dealt with, with respect to spawning gravels. **Mr. Brinkmeyer** said it is gratifying to be personally involved with the commission.

Mr. Brinkmeyer's resume indicates he was raised on a family farm in Hardin County, Iowa. When he was five years of age, he worked with his father unloading lumber from box cars, stacking by grade and length. Later, he put himself through college by working at various jobs. After working for several companies, and learning all aspects of the lumber industry, Mr. Brinkmeyer acquired a sawmill in Laclede, Idaho. He eventually built the business into one of the top mills in the region. Later, he merged that business with another mill and it became the largest lumber producer in the Intermountain West.

Chairman Bair thanked Mr. Baker and Mr. Brinkmeyer for their service on the Lakes Commission and said consideration of their reappointment would take place at the next Committee meeting.

Chairman Bair called on Michael McCurdy to report on "Non-Municipal Solid Waste Landfills in Idaho."

PRESENTATION:

Mr. McCurdy, P.E., CHMM, Waste Management and Remediation Division Administrator, Department of Environmental Quality (DEQ), introduced two staff members. They were Dean Ehlert, Assessment and Compliance Unit Manager, DEQ, and Molly Mangerich, Solid Waste Program Manager, DEQ, to assist with the presentation, if needed.

Mr. McCurdy said he would provide background regarding federal regulations; address the State regulatory framework; and explain about the tier classifications for non-municipal solid waste landfills that are under the Solid Waste Management Rules.

Federal regulations for solid waste disposal facilities are contained in Title 40 of the Code of Federal Regulations, Part 257, which includes the criteria for classifying solid waste disposal facilities and practices. Part 258 contains the criteria for classifying municipal solid waste landfills. There are two classifications of solid waste facilities. One of them is the municipal solid waste landfill, which accepts household waste. The other is a non-municipal solid waste landfill that accepts non-municipal waste such as inert waste, construction and demolition waste, and some non-hazardous industrial waste.

Mr. McCurdy provided the federal definitions for defining waste. Household waste is any solid waste- including garbage and sanitary waste in septic tanks - derived from households. "Municipal solid waste landfill unit" means a discrete area of land or an excavation that receives household waste, with one exception. The one exception is a construction and demolition landfill that receives residential lead-based paint waste.

Federal interpretations of municipal solid waste includes everyday items, such as packaging, grass clippings, furniture, clothing, bottles and cans, food scraps, newspapers, appliances, consumer electronics, and batteries. These items come from homes, institutions such as schools and hospitals, and commercial sources such as restaurants and small businesses. This does not include industrial, hazardous, or construction waste.

Mr. McCurdy stated waste from a mattress, carpet, or furniture manufacturing would be categorized as industrial waste and could be disposed of in a non-municipal solid waste landfill. However, mattresses, carpets, and furniture discarded from residences, schools, and businesses would be categorized as municipal solid waste, or household waste, which is disposed of in municipal solid waste landfills.

Mr. McCurdy said based on requests from health districts, the *Guidance for Siting, Design, and Operations of Non-Municipal Solid Waste Landfills* was created to help explain the Solid Waste Management Rules. The guidance was initiated in 2003 after the Solid Waste Management Rules became effective and were finalized in January 2017. The guidance is not a rule and does not have the force and effect of law. Rather, it is designed to serve as a primary reference tool to assist those impacted by agency actions in order to comply with laws and rules.

For primacy, the authority to implement the program in lieu of EPA, the State requirements must be no less stringent, but at least equivalent to the federal regulations. The Solid Waste Facilities Act (SWFA) directs the State to avoid duplicative or conflicting regulations.

Mr. McCurdy said in Idaho, we also have a division of solid waste regulatory responsibilities between DEQ and the seven public health districts. The Idaho SWFA gives specific regulatory authority to both DEQ and the health districts. Provisions in a 2013 Memorandum of Understanding (MOU) provide a similar regulatory oversight structure.

DEQ responsibilities include:

- Reviewing and approving or denying siting and design applications; providing copies to districts;
- Providing courtesy reviews/comments to health districts on operation plans, closure plans, and postclosure plans; and
- Enforcing all aspects of site, design, groundwater monitoring, and financial assurance.

Health district responsibilities include:

- Approving or denying applications for operation, closure and postclosure plans, and providing copies to DEQ;
- Providing regulatory oversight of operations, including unannounced annual inspections;
- Providing inspection reports and enforcement correspondence to DEQ;
- Providing courtesy reviews/comments to DEQ on siting and design applications;
- Working with counties and cities on issues; and
- Enforcing all aspects of operations, closure, and postclosure.

Under the Solid Waste Management Rules, there are three tiers for Non-Municipal Solid Waste Land Fills (NMSWLFs). The three tier classifications consider the volume and type of waste disposed, as well as the potential for harm to human health and the environment from the waste managed in these facilities.

Tier I facilities have a total disposal capacity less than or equal to 2,000 cubic yards. Owners and operators are required to submit notice to DEQ and the local health district of their intent to operate. They can accept materials for disposal that are not likely to produce leachate. There are two Tier I NMSWLFs in Idaho and they are located in Elmore County and Blaine County.

Tier II facilities have a total disposal capacity greater than 2,000 cubic yards, are required to obtain site and design approval from DEQ, and are required to obtain operating and closure/postclosure plan approval from the local health district. There are 34 Tier II NMSWLFs in Idaho. They do not dispose of conditionally-exempt, small quantity generators (CESQG), now called very small quantity generators (VSQG), hazardous waste. Further, they do not dispose of materials with a high human pathogenic potential. They also do not manage solid waste in a manner or volume that will form toxic leachate or gas or manage solid waste in a manner or volume that is likely to pose a substantial risk to human health or the environment.

Tier III landfills: dispose of CESQG/VSQG hazardous waste; dispose of materials with a high human pathogenic potential; manage solid waste in a manner or volume that will form toxic leachate or gas and manage solid waste in a manner or volume that is likely to pose a substantial risk to human health or the environment. Tier III facilities must comply with groundwater monitoring requirements and liner, leachate collection, and air emission control requirements. There are no Tier III NMSWLFs in Idaho, but there are 23 Municipal Solid Waste Land Fills (MSWLFs).

Mr. McCurdy discussed monitoring and measurement requirements. For Tier I landfills, the owner and operator shall maintain on-site documentation, such as a daily log of the quantity and type of waste received. For Tier II and III facilities, general operating requirements include waste monitoring and measurement which includes a daily written log listing the types and quantities of wastes received; a plan for monitoring and handling receipt of unauthorized wastes; routine characterization of the wastes received; and other measures included in an approved operating plan. Operators should conduct visual inspections to screen each load entering their facility.

Mr. McCurdy said federal regulations require household waste (municipal waste) to be disposed of in a MSWLF. Therefore, DEQ does not have authority to designate certain household waste as a NMSW to allow those household wastes to be disposed of at a NMSWLF. Idaho requirements would become less stringent than federal regulations. Household waste can generate leachate and/or gas that could impact human health and the environment. Tier II landfills do not have environmental monitoring or controls to determine and limit potential impacts to human health and the environment. Tier III landfills have groundwater monitoring environmental control requirements.

In closing, **Mr. McCurdy** said NMSWLFs are responsible for ensuring only acceptable non-municipal solid waste is disposed of in their facility and prohibiting unauthorized waste disposal. Disposal is based on the type of waste approved for a specific facility. If a NMSWLF accepts household generated waste, it becomes subject to the stricter MSWLF requirements.

TESTIMONY: **Don Ebert**, Chairman, Clearwater County Commission, said he has been a commissioner for 16 years, and in that time, he feels that the interpretation of the rules has changed. Because they can not take things to the landfill that they took in the past, it costs the County a lot of money. **Mr. Ebert** stated there is a problem.

TESTIMONY: **Denis Duman**, Idaho County Commissioner, said they do not have a MSWLF in his area and they have to pay to have it hauled away. The two places that it is taken, north on Highway 12 to Missoula or south on Highway 95 to Payette, the highways follow rivers and the transportation can be dangerous, as well as expensive.

TESTIMONY: **Skip Brandt**, Idaho County Commissioner and former Idaho Senator, said this issue might seem simple, but is not. He noted a shared interest in protecting the environment, but the reality of the situation asks how do entities separate trash out in a common sense way. **Mr. Brandt** said they truck their garbage 150 miles one way to dump in a municipal landfill that is highly costly. They either transport waste to Highway 12 to Missoula or go down Highway 95 to Payette; that puts a lot of trucks and garbage on the river roads. If you are dumping tons of material in each day, as in Ada County, it could become an issue because it is a matter of volume. But when we are addressing small non-municipal landfills that are scattered around the State, it is a matter of common sense. **Mr. Brandt** said they would like to sit down, and with the guidance of the Legislature, address those issues that the counties are facing regarding landfills.

DISCUSSION: **Chairman Bair** asked Mr. McCurdy if he had the opportunity to meet with a group of county commissioners and discuss these issues over the last ten years or so. **Mr. McCurdy** replied that within the last two years, they have talked with the north central Idaho commissioners and there were disagreements in some of the terminology definitions and interpretations. Mr. McCurdy stated they looked at it from the standpoint of protecting human health and the environment.

Chairman Bair then asked Mr. McCurdy if DEQ ever considered or tried using waivers from part of the EPA requirements in order to better fit these smaller low-volume type facilities. Mr. McCurdy deferred to Dean Ehlert, Assessment and Compliance Unit Manager for DEQ. **Mr. Ehlert** said they have to look at a specific waiver, but there is language, in either 40 CFR Part 258 or the statute, that gives waiver authority. **Senator Brackett** inquired if there is an Idaho solution or is it derived from federal sources. **Mr. Ehlert** said it is probably a combination of both. He thinks it can be worked out with the specific north central non-municipal solid waste facilities and the counties in that region to try and resolve this specific issue. However, **Mr. Ehlert** cautioned, to a certain

degree, Idaho entities are also under the expansive purview of the federal regulations, as well.

TESTIMONY: **Josh Bartholomew**, Vice President, Southern Idaho Solid Waste Association (SISWA), and Executive Director, Southern Idaho Solid Waste, which is a seven-county Solid Waste District. **Mr. Bartholomew** said the SISWA needs to look at the intent of the law and feels the guidance is more stringent than the federal law. He suggested they fine tune some of the guidance and all confer together.

TESTIMONY: **Nate Francisco**, Environmental Manager, Southern Idaho Solid Waste, and Secretary for the Idaho Solid Waste Association, reported the issue in southern Idaho is not as challenging as the one in central Idaho. **Mr. Francisco** stated they had made some operational changes in the past based on their views of the future. He suggested drafting ways to interpret the EPA's regulations and the history, and to make something official when they sit down to look at the guidance.

DISCUSSION: **Chairman Bair** asked Jess Byrne, Deputy Director, DEQ, if he would accept the assignment and the responsibility on behalf of his boss, John Tippetts, Director, DEQ, to meet with the county commissioners and the Association of Counties to work something out this next year so that legislation will not have to be proposed. **Mr. Byrne** said he would be happy to do so.

Chairman Bair had one last question for Mr. McCurdy regarding Tier II and referring to human health and the environment. **Chairman Bair** said he wanted confirmation that DEQ has conducted due diligence and there are no long-term effects. **Mr. McCurdy** said the requirements for Tier II do not include those environmental controls and it is based on the volume and the manner in which the waste is managed for those facilities. As part of the site application and site design, DEQ would review that and ensure that whatever waste was proposed to be disposed of at that facility would meet those specific requirements.

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

Senator Bair
Chair

Juanita Budell
Secretary