

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, January 30, 2023

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Burtenshaw, Vice Chairman Adams, Senators Guthrie, Den Hartog, Harris, Okuniewicz, Schroeder, Semmelroth, and Taylor

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 Burtenshaw called the meeting of the Senate Resources and Environment Committee (Committee) to order at 1:30 p.m.

RS 30112: **Relating to Property Exempt from Taxation. Paul Arrington**, Executive Director and General Counsel, Idaho Water User's Association, explained **RS 30112** would amend Idaho Code § 63-602(3)(a) to add the irrigation exemption from property taxes for certain properties owned by irrigation districts and canal companies to the list of tax exemptions that do not require annual filings.

MOTION: **Senator Guthrie** moved that **RS 30112** be sent to print. **Senator Schroeder** seconded the motion. The motion carried by **voice vote**.

RS 30113: **Relating to Irrigation. Mr. Arrington** explained in 1989, the legislature passed Idaho Code § 67-6537, which stated a policy that encouraged the use of surface water whenever land was being developed. Because of this policy, the Idaho Department of Water Resources (IDWR) had placed conditions on new groundwater rights where there was existing surface water to require that the surface water be used first. A recent court decision held that the IDWR Director did not have authority to place that condition on new groundwater rights. **RS 30113** gave the IDWR Director the authority to condition new groundwater rights to require that when surface water was there and available, it would be used first.

MOTION: **Senator Den Hartog** moved that **RS 30113** be sent to print. **Senator Taylor** seconded the motion. The motion carried by **voice vote**.

RS 30114: **Water Management Account, Projects. Mr. Arrington** explained **RS 30114** amended Idaho Code § 42-1760 to add language included in the IDWR 2023 appropriations bill that provided guidance to the Idaho Water Resource Board (IWRB) in the development of grant programs and expenditures, and organized the section for clarity.

MOTION: **Senator Schroeder** moved that **RS 30114** be sent to print. **Vice Chairman Adams** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL REAPPOINTMENT VOTE: **Senator Den Hartog** moved to send the Gubernatorial Reappointment of John Ford Elsaesser of Priest River, Idaho to the Lake Pend Oreille Basin Commission to the floor with recommendation that he be confirmed by the Senate. **Senator Taylor** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL REAPPOINTMENT VOTE: **Senator Guthrie** moved to send the Gubernatorial Reappointment of Brent Baker of Athol, Idaho to the Lake Pend Oreille Basin Commission to the floor with recommendation that he be confirmed by the Senate. **Senator Okuniewicz** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL REAPPOINTMENT VOTE:

Senator Schroeder moved to send the Gubernatorial Reappointment of Timothy Murphy of McCall, Idaho to the Idaho Fish and Game Commission to the floor with recommendation that he be confirmed by the Senate. **Senator Den Hartog** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT VOTE:

Vice Chairman Adams moved to send the Gubernatorial Appointment of Jordan Cheirrett of Lava Hot Springs, Idaho to the Idaho Fish and Game Commission to the floor with recommendation that he be confirmed by the Senate. **Senator Den Hartog** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL:

Chairman Burtenshaw then passed the gavel to Vice Chairman Adams.

DOCKET NO. 58-0101-2101:

Rules for the Control of Air Pollution in Idaho (ZBR Chapter Rewrite, Fee Rule) - Proposed Rule. **Tiffany Floyd**, Air Quality Division Administrator for the Idaho Department of Environmental Quality (IDEQ), and **Carl Brown**, Air Quality Rules and Planning Coordinator, IDEQ presented changes to **Docket No. 58-0101-2101**. **Ms. Floyd** referred the Committee to her PowerPoint presentation titled "IDEQ, Air Quality Division" (Attachment 1). She explained that in order for IDEQ to be the implementing authority of the Clean Air Act instead of the Environmental Protection Agency (EPA), IDEQ was required to have rules that implement health based air quality standards known as the National Ambient Air Quality Standards, and to have an air quality operating permit program for significant sources of air pollution. **Ms. Floyd** explained revisions to this Docket cover three parts, a revised Title V fee permitting structure, zero-based regulation rulemaking to comply with Governor Little's 2020 executive order, and the annual Incorporation by Reference of federal regulations. She referred the Committee to the 2023 Legislative Session Pending Fee Rule Book starting on Page 76, and to the provided red-lined version of this Docket (Attachment 2).

She explained that in 2018, the Idaho National Laboratory (INL) decreased their emissions to fall below the classification of a Title V facility and they were no longer required to pay the \$500,000 in annual fees they paid for 20 years. The loss of this funding triggered a fiscal evaluation and program review where projections showed that in order to sustain the program, an increase in fees of about \$300,000 annually was necessary. She provided some background on the Title V fee program and the existing fee structure. She reviewed proposed fixed annual fees based on emissions, fees based on a rate based on the consumer price index rate, referred to in the Clean Air Act as the presumptive minimum, and fee for service. **Ms. Floyd** stated IDEQ expected these changes to the fee structure to be sustainable for eight to ten years. Fee increases would be effective July 2024.

DISCUSSION:

Senator Den Hartog asked what costs these fees covered. **Ms. Floyd** responded they were for activities related to issuing permits, permit modifications, and compliance. **Ms. Floyd** also confirmed that a company who has these types of emissions pays all three fee types in combination, and she stated the bulk of their facilities fell into the category of 0 to 199 emissions tons per year, a few fell in the 200 to 499 category, some in the 500 to 999 category, and none at the higher levels. In response to a question from Senator Guthrie, **Ms. Floyd** stated INL had been paying more than their fair share and IDEQ determined that they did not need to recover the entire loss of \$500,000. **Vice Chairman Adams** asked where INL now fell on the emissions list. **Ms. Floyd** responded that INL's emissions fell below the threshold and they were no longer in the Title V program.

Ms. Floyd briefly reviewed IDEQ's zero-based regulation rulemaking, which identified sections that were outdated, needed clarifying, could be streamlined, or needed further review. They focused primarily on maintaining their authority and the impact to other agencies, and sought guidance from the EPA as well as the Division of Financial Management. Negotiated rulemaking included representatives from environmental consulting firms, environmental groups, industry, the EPA, and the public.

Mr. Brown provided examples of the types of zero-based regulation rulemaking changes made to this Docket and an overview of Incorporation by Reference of federal regulations. He referred the Committee to the provided red-lined version of this Docket (Attachment 2). Changes to this Docket were not substantive changes, but changes that streamlined, simplified, and removed outdated language. **Mr. Brown** provided examples of the following types of changes:

- Example 1, Page 1: deleted unnecessary words, removed restrictive words like shall and replaced them with either will or must, replaced the phrase two-year with consecutive 24 month, and fixed grammatical errors.
- Example 2, Page 13: converted some things written out in text, especially numbers, to a table to make them easier to read.
- Example 3, Page 25: reduced repetition by moving identical language to one section.
- Example 4, Page 32: deleted unnecessary and unused sections. In this example, multiple sections related to allowing variances from complying with an air permit were never approved by the EPA and have never been used, so they were deleted.
- Example 5, Page 54: this section was proposed for deletion since it had never been used, but was retained due to comments received.
- Example 6, Page 64: removed outdated language. In this example, Title V due dates in the past were deleted.
- Example 7, Page 108: deleted sections where the underlying authority was removed. Sections 517 through 527 addressed a program that would be repealed on July 1, 2023. These sections would remain in effect until that date and then removed.
- Example 8, Page 120: removed rules that could be addressed in a better way. In this example, Sections 563 through 574 outlined how agencies work together, and this was thought to be more appropriately addressed in a memorandum of understanding (MOU).
- Example 9, Page 185: removed rules that were not required and were better suited to be addressed at a local level. In this example, IDEQ removed rules that addressed odors, which were not a Clean Air Act requirement and were not approved by EPA.
- Example 10, Page 186: deleted rules that reproduced incorporated rule language word for word. In this example, IDEQ removed a section that reproduces the federal language regarding the streamlined permitting process for rock crushers or nonmetallic mineral processing plants, since that rule was incorporated by reference.
- Example 11, Page 196: deleted outdated rule language regarding incorporation by reference. In this example, the EPA updated requirements for landfills that superseded what was contained in IDEQ's rules.

DISCUSSION: Senator Okuniewicz asked several questions regarding rules changes related to odors. **Mr. Brown** answered IDEQ retained the rules related to rendering plants, but the broad overview of trying to control all odors was removed. **Ms. Floyd** added that IDEQ worked closely with cities and counties whenever there was an odor issue, but it was difficult to enforce the odor rules, so instead they provided help or a resource. She also stated that IDEQ did not receive any comments during rulemaking expressing concerns regarding changes to rules related to odors. **Senator Guthrie** asked if rules might be getting oversimplified, making it more difficult for someone to navigate the rules. **Ms. Floyd** responded that if someone wanted a rule to stay for whatever reason, they likely left it alone, and if someone in the future believed a rule that had been revised or deleted needed to be returned to the way that it was, they likely would put it back. She added that IDEQ provided support and assistance to the community in navigating the rules.

Mr. Brown then provided an overview of IDEQ's annual Incorporations by Reference of federal regulations revised in this Docket. He referred the Committee to the provided handout, Overview of Incorporations by Reference for the IDEQ Air Quality Division (Attachment 3). He stated the EPA promulgated rules approving several Idaho State Implementation Plan submittals required by the Clean Air Act. Most notable was the redesignation of the West Silver Valley nonattainment area in northern Idaho to attainment for particulate matter. This meant Idaho was now in full compliance with all National Ambient Air Quality Standards statewide. There were some minor updates to permitting requirements that did not impact most Idaho facilities. The most significant federal change updated and clarified the municipal solid waste landfill rules, and aligned compliance times for gas collection system installation. Affected facilities in Idaho included larger landfills throughout the state.

TESTIMONY: **Alan Prouty** on behalf of the Environment Committee of the Association of Commerce and Industry, testified in favor of changes to this Docket.

DISCUSSION: **Senator Den Hartog** asked about the reason for the significant annual fees charged to INL that did not appear to be based on actual emissions. **Mr. Prouty** responded that the fee structure had three different components, and one was designed to deal with the complexity of a source, which applied in INL's case.

MOTION: **Chairman Burtenshaw** moved to approve **Docket No. 58-0101-2101**. **Senator Schroeder** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 58-0102-2201: **Water Quality Standards - Proposed Rulemaking**. **Dr. Mary Anne Nelson**, Surface, and Wastewater Division Administrator, IDEQ, reviewed changes to this Docket. She referred the Committee to her PowerPoint presentation titled "Docket No. 58-0102-2201 Human Health Criteria for Arsenic" (Attachment 4), the 2023 Legislative Session Pending Rule Book starting on Page 67, and the provided red-lined version of this Docket (Attachment 5). **Dr. Nelson** provided some background on arsenic as a pollutant, IDEQ's role in water quality standards, and a brief summary of the pending rule language. She explained IDEQ's most recent update to their arsenic criteria occurred in 2010. The EPA approved this update, but in 2015, as part of a lawsuit settlement agreement, they were ordered to revise this criteria. IDEQ's deadline to submit new arsenic criteria to the EPA was November 2023. If the EPA did not approve IDEQ's criteria, they had until November 2024 to promulgate federal criteria in its place.

Dr. Nelson explained water quality criteria were concentrations of chemicals in water and fish set at levels to protect aquatic life and human health. Water quality criteria were then used to calculate limits in discharge permits and waterbody restoration plans. The pending arsenic criteria contained two specific elements, a fish tissue concentration and a water column concentration. These rules outlined specific criteria for fish only and water and fish. In addition to the numeric criteria, IDEQ included rule language regarding implementation of the criteria, such as how to collect and evaluate fish tissue. **Dr. Nelson** concluded by reviewing possible costs to the regulated community due to this pending rule.

DISCUSSION:

In response to a question from Senator Schroeder, **Dr. Nelson** said when using the statement "fish legally harvested or of legally harvestable size", this was in reference to Idaho Fish and Game rules and IDEQ did not have jurisdiction within tribal boundaries. In response to a question from Senator Guthrie, **Dr. Nelson** stated she did not know if arsenic dissipated over time or if it was stagnant. **Senator Guthrie** then asked if arsenic dissipation might have an effect on arsenic measurements. **Dr. Nelson** responded what they found in looking at the data was there was not a solid relationship between the arsenic concentration in the water and the arsenic concentration in the fish. She added the arsenic concentration was dependent upon the location, various factors going on at that location, the fish diet, and what was in the water.

TESTIMONY:

Mary Alice Taylor on behalf of the Association of Idaho Cities, and **Alan Prouty**, on behalf of the Environment Committee of the Association of Commerce and Industry, testified in favor of changes to this Docket.

MOTION:

Senator Taylor moved to approve **Docket No. 58-0102-2201**. **Senator Schroeder** seconded the motion. The motion carried by **voice vote**.

ADJOURNED:

There being no further business as this time, **Vice Chairman Adams** adjourned the meeting at 2:52 p.m.

Senator Burtenshaw
Chair

Shelly Johnson
Secretary