

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, January 15, 2025

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Burtenshaw, Vice Chairman Hart, Senators Guthrie, Harris, Okuniewicz, Cook, VanOrden, Kohl, 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.

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

GUBERNATORIAL REAPPOINTMENT VOTE: **Vice Chairman Hart** moved to send the Gubernatorial Reappointment of **Marc Brinkmeyer** of Sandpoint, Idaho to the Lake Pend Oreille Basin Commission to the floor with the recommendation that he be confirmed by the Senate. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

RS 31880C1 **Relating to Fish and Game. Senator Foreman** explained **RS 31880C1** amended Idaho Code § 36-1402 to provide that any person with an outstanding fine for violations of Idaho Fish and Game (IDFG) law was ineligible to apply for a hunting, fishing, or trapping license tag or permit until all fines were paid. This applied to lifetime license certificate holders, but did not apply to violators with approved payment plans that were not 90 days or more in arrears. He noted this proposed change was well coordinated with the enforcement branch of IDFG.

DISCUSSION: **Senator Cook** asked if this legislation applied to special drawings. **Senator Foreman** responded that this would apply to any type of application, including special permits.

MOTION: **Senator Cook** moved that **RS 31880C1** be sent to print. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 58-0123-2401 **Contested Case Rules and Rules for the Protection and Disclosure of Records - Temporary and Pending Rule. Kristin Ryan**, Deputy Director, Idaho Department of Environmental Quality (DEQ) explained **Docket No. 58-0123-2401** was both a temporary rule and a proposed rule, and they were identical. The temporary rule was effective from adjournment of the 2025 legislative session to July 1, 2025. If approved, the pending rule was effective July 1, 2025. **Ms. Ryan** referred the Committee to the pending rule in the 2025 Senate Resources and Environment Pending Rules Review Book, starting on page 344. She explained this rulemaking updated DEQ rules to make them consistent with the Idaho Rules for Administrative Procedures that were adopted by the Office of Administrative Hearings (OAH), but retained procedures specific to DEQ.

DISCUSSION: **Senator Okuniewicz** requested clarification on how this rule had changed. **Ms. Ryan** explained that when the OHA was established, they promulgated their own regulations about how contested cases would go through the appeal process. DEQ had rules on their books regarding contested cases, which were revised to eliminate duplicative regulations. **Senator Okuniewicz** asked if the procedures that were important to DEQ remained in this rule. **Ms. Ryan** responded that they did, and there were no significant changes to the substance of this rule.

A discussion ensued among the Committee members regarding if both rules should be passed with separate motions or with a single motion. **Lauren Smyser**, from the Office of the Administrative Rules Coordinator, clarified that when temporary and pending rules were under one docket number, only one motion was required, but if they were under two different docket numbers, they would need two motions. In this instance, only one motion was needed.

MOTION: **Senator VanOrden** moved to approve **Docket No. 58-0123-2401**. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 58-0110-2301 **Rules Regulating the Disposal of Radioactive Materials Not Regulated Under the Atomic Energy Act of 1954, as Amended (ZBR Chapter Rewrite) - Pending Rule.** **Michael McCurdy**, Waste Management and Remediation Division Administrator, DEQ, referred the Committee to the 2025 Senate Resources and Environment Pending Rules Review Book, starting on page 309. He explained the negotiated rulemaking for this rule was initiated in response to ZBR. There were no comments from the public during the rulemaking process. A few of the more substantive changes were:

- Section 004., Incorporation by Reference, page 312. Modified to include incorporation by reference for the Standards for Protection Against Radiation and the Unimportant Quantities of Source Materials.
- Section 010., Definitions, page 313. Removed the definitions that were identified in statute and referred to Idaho Code sections within the rule.
 - Language previously omitted was added to new Section 010.02.b.
 - Definitions of licensee (010.04) and total effective dose equivalent (010.13) were added.
 - Definitions of naturally occurring radioactive material or NORM (010.05) and technologically enhanced naturally occurring radioactive material or TENORM (010.12) were revised based on discussion during the negotiated rulemaking process.
- Section 020., Radiation Protection Standards, page 315. Removed subsections 020.03.b and 020.03.c as the language referred to facilities not governed or regulated by this rule.
- Section 030., Records, page 316. Added examples of types of disposal records that must be kept.

DISCUSSION: **Senator Okuniewicz** asked for clarification on the definition of depleted, as stated in 010.02.b. regarding by-product material, and how something that was formerly radioactive could now be less radioactive and not a concern, or be considered only a by-product as opposed to radioactive. **Albert Crawshaw**, Rules and Policy Coordinator for the Hazardous Waste Program, DEQ, explained this was language taken from the Nuclear Regulatory Commission (NRC).

MOTION: **Senator Harris** moved to approve **Docket No. 58-0110-2301**. **Senator Cook** seconded the motion. The motion carried by **voice vote**.

Standards and Procedures for Application of Risk Based Corrective Action at Petroleum Release Sites (ZBR Chapter Rewrite) - Pending Rule. Mr. **McCurdy** explained this rule provided the requirements to respond to, assess, and cleanup petroleum releases. It had been renamed, Rules for Petroleum Release Corrective Action. He referred the Committee to the 2025 Senate Resources and Environment Pending Rules Review Book, starting on page 353. He explained the negotiated rulemaking for this rule was initiated in response to ZBR.

As part of the ZBR process, two sections were moved from 58.01.02, Water Quality Standards, to this rule chapter. This was done to consolidate petroleum release requirements into one chapter. In addition, DEQ's risk evaluation software was replaced with the Environmental Protection Agency's (EPA) risk evaluation process utilizing their calculators, which were routinely updated and available at no charge. DEQ's software was outdated and the bid to update it was \$1.9 million dollars.

This rulemaking also included updates to be consistent with the adopted Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks as required for approval of the state Underground Storage Tank Program. Two minor items were unresolved; one was that the Petroleum Storage Tank Fund's Committee of Trustees be listed as a required participant for risk evaluation manual revisions, and the other was that a certain chemical be excluded from vapor intrusion risk evaluations.

A few of the more substantive changes were:

- The title was changed to reflect the inclusion of the Water Quality Standards sections related to petroleum release correction action.
- Section 010., Definitions, page 357. Removed definitions that were identified in statute and included references to other rule chapters where definitions were cited. For acceptable target hazard quotient, added the statement for a hazardous quotient of 0.1 for multiple chemicals, which should have been included in 2008.
- Section 060., Petroleum Release Reporting, Investigation, and Confirmation, page 359. This section was moved from 58.01.02.851.
- Section 061., Petroleum Release Response and Corrective Action, page 360. This section was moved from 58.01.02.852.
- Section 200., Risk Evaluation Process, page 365. Removed reference to 58.01.02, which was no longer necessary. Added information relevant for use of the EPA risk calculator. Deleted subsection 200.03, due to redundant language with Section 061.06.
- Section 300., Site Specific Risk Evaluation, page 367. Included reference to EPA risk calculators and deleted unnecessary language.
- Section 400., Establishment of Remediation Standards, page 368. Included reference to EPA risk calculators and deleted unnecessary language.
- Section 700., Guidance Manual, page 370. Deleted what had been completed.
- Table 800., Table. Added footnote to clarify the applicability of vapor intrusion.

DISCUSSION: **Senator Harris** asked if using EPA's calculators would make DEQ subject to more EPA regulations. **Mr. McCurdy** responded that risk calculators start with a screening level. From there, there was an option to clean up to that screening level, or to do a site specific risk evaluation that took into account site specific circumstances. It was possible that based on the site specific risk evaluation, no cleanup would be required because the site met the risk based closure criteria. **Senator Okuniewicz** noted that Section 200. included other approved methods, and asked who would approve these methods. **Mr. McCurdy** responded that other processes could be used if they were reviewed and approved by DEQ.

MOTION: **Senator Guthrie** moved to approve **Docket No. 58-0124-2401**. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 58-0102-2401 **Water Quality Standards - Pending Rule.** **Mary Anne Nelson**, Surface, and Wastewater Division Administrator, DEQ, referred the Committee to the 2025 Senate Resources and Environment Pending Rules Review Book, starting on page 267. She explained this rulemaking removed two Sections, 851. Petroleum Release Reporting, Investigation, and Confirmation, and 852. Petroleum Release Response and Corrective Action. These two sections were moved to **Docket No. 58-0124-2401**, where they more clearly aligned.

MOTION: **Senator Harris** moved to approve **Docket No. 58-0102-2401**. **Vice Chairman Hart** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Burtenshaw** adjourned the meeting at 2:56 p.m.

Senator Burtenshaw
Chair

Shelly Johnson
Secretary