



ASSOCIATED LOGGING CONTRACTORS, INC.

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October 19, 2020

Mark Boyle, Smoke Management Supervisor
DEQ Coeur d'Alene Regional Office
2110 Ironwood Parkway
Coeur d'Alene, Idaho 83814
paula.wilson@deq.idaho.gov

RE: DEQ Negotiated Rule Draft No. 3 - Rules for the Control of Air Pollution in Idaho/prescribed burning, Docket No. 58-0101-1901 + "Initial Draft September 16, 2020 Idaho Prescribed Fire Smoke Management Field Guide – to Support Rule Discussion"

Dear Mr. Boyle,

Thank you for the continued opportunity to participate and submit comments on the proposal referenced above. As noted previously the Associated Logging Contractors of Idaho (ALC) is a non-profit trade association representing 482 member businesses in Idaho. Our members are logging, equipment, and wood products hauling contractors located across Idaho. Our members harvest timber in Idaho's forests. Also noted previously but important to remember, Idaho law requires that material generated during the harvest of timber – slash – be treated in order to minimize the danger of wildfire. Our logging contractors are held legally and financially responsible for treating this slash. It is with this background that we are continuing to participate in this process.

The ALC respectfully offers these comments on Draft No. 3. We may revise these comments as we continue to participate and submit additional comments as the rulemaking continues. Our concerns are as follows.

- 1.) As noted previously, while DEQ has now acknowledged that Idaho law requires logging slash to be "treated" we continue to be concerned that the DEQ has not adequately addressed the conflict between the proposed rule and this legal requirement.
- 2.) While 'smoke management training' has been removed from this draft of the rule we see that a "field guide" has now been drafted that includes this training. Any training DEQ wishes to have conducted needs to be in the rule and well vetted publicly. As a side note LEAP is a program of the University of Idaho.
- 3.) We remain adamantly opposed to any of this new process being offloaded into an internal guidance document – now titled "field guide" - out of the purview and legal processes of Idaho law and rulemaking. In the "negotiated rule makings" held via Zoom and telephone conferencing DEQ staff state the reasoning for moving items into a field guide is to adhere to the new rules guidance from the state administration including concern over "word count". It is interesting that the proposed rule is **12 pages** long, but the field guide is **109 pages** long. We believe that any regulation, either expressed or implied (as seen in the draft field guide) should be in rule so that a full public process is held including

through the legislative review period. Internal guidance documents are subjective, open to individual interpretation, and historically frowned upon by Idaho's legislators. Sound and public policy should not be determined by word counts.

4.) We remain concerned that no apparent evaluation of the costs to putting a framework and staff in place to administer this huge new regulatory scheme at DEQ has been conducted.

5.) We remain concerned that no apparent evaluation of the regulatory cost and burden placed upon those who will be compelled to participate has been completed and published to the public.

6.) We remain concerned that the timeframes for submitting plans for burning of slash piles and for acquiring permission to burn are not realistic and could result in non-compliance as well as financial penalties to the logging contractor for not fulfilling contractual and law required slash treatment.

Frankly, we continue to believe the DEQ completely underestimates the number of slash piles that are burnt each year in Idaho.

7.) We are concerned about the burden of record keeping on slash pile burning both outlined in the rule and implied in the field guide.

8.) We do appreciate that logging contractors are now named as participants in the proposed Advisory Committee. As noted previously logging contractors are and will be personally liable and financially responsible for operating under this proposal and as such should be included in the Advisory Committee. We thank you for agreeing with us on this in Draft # 3.

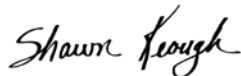
9.) We have process concerns about this negotiated rule making. This round of "meetings" has taken place via Zoom and telephone conferencing. We are respectful of the challenges we all face with the COVID-19 pandemic. However, there were 3 meetings scheduled for 8 hours each during regular business hours of 8:30 a.m. to 4:30 p.m. Pacific Time. While this is convenient for DEQ staff, governmental affairs representatives and others, these are the exact hours during which logging contractors are working in the woods. As they will bear the biggest burden of this overreaching regulation, we are very concerned that in order to participate on an individual basis they must shut down their job for the day. We are deeply concerned about this. This process does not seem to be a 'negotiation' at all but rather a ramrodding effort over those most impacted by this new regulation.

For the reasons outlined above, the ALC remains in opposition to these proposed rules. We do acknowledge and thank DEQ staff for including the ALC in public outreach efforts and for expressing a willingness to meet with logging contractors at times more amenable to them and for the expressed willingness to visit logging sites when slash pile burning occurs.

We look forward to our continued participation in this rulemaking process.

Thank you for your time and consideration.

Sincerely,



Shawn Keough
Executive Director

cc: Jess Byrne, Director, Idaho Dept. of Environmental Quality
Sam J. Eaton, Office of Governor Little