

October 20, 2020

VIA EMAIL: [paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

Ms. Paula Wilson  
Idaho Dept. of Environmental Quality  
1410 North Hilton  
Boise, ID 83706

Re: DEQ Negotiated Rulemaking – Rules for the Control of Air Pollution  
Idaho Docket No. 58-0101-1901 (Negotiated Rule Draft No. 3)

Dear Ms. Wilson:

The Idaho Association of Commerce & Industry (IACI) appreciates the opportunity to provide comment on the above-referenced rule. IACI's prior comments on draft 2 of the proposed rule (dated January 2, 2020) expressed significant reservations with the direction the Department had taken with the rule. Draft 3 of the proposed rule increases our reservations and creates new concerns that the Idaho Department of Environmental Quality (DEQ) did not take into consideration our prior comments.

IACI does not believe DEQ has demonstrated a need for new regulations in this area and does not support the creation of a new program for operators who already have a permit with another agency.

Despite our prior comments, draft 3 of the proposed rule increased the proposed regulations by significantly expanding DEQ's permitting requirements and oversight for prescribed burns in Idaho.

The Idaho Forestry Act (Chapter 1, Title 38) and the Idaho Forest Practices Act (Chapter 13, Title 38) require the Idaho Department of Lands (IDL) to regulate prescribed fires in Idaho as well as slash burning. Commercial operators who burn slash piles must post a cash bond or hazard reduction money from the purchaser to IDL, as well as obtain a permit, prior to remediating any slash piles through prescribed fire. The statutes require slash piles to be remediated prior to the operator being released from the bond or obtaining the hazard reduction money (I.C. 38-122). Inserting DEQ into this process with a new burn permit is not tenable.

It is clear that the IDL, and in fact the Land Board, is statutorily designated as the agency to regulate air quality with regard to forest practices. The purpose of the Forest Practices Act in 38-1302(2) clearly states, "...To encourage uniform forest practices implementing the policy of this chapter, and to provide a mechanism for harmonizing

and helping it implement and enforce laws and rules relating to federal, state and private forest land, it is the purpose of this chapter to vest in the board authority to adopt rules designed to assure the continuous growing and harvesting of forest tree species and to protect and maintain the forest soil, air, water resources, wildlife and aquatic habitat.”

IDL rules already address smoke from prescribed fire (see IDAPA 20.02.01.071), specifically stating, “It is the purpose of these rules to establish a management system for smoke from prescribed fires that will protect air quality.” If DEQ feels these rules are not adequate to protecting air quality in Idaho there are avenues available to address that issue without creating a new permitting program.

The Idaho Forest Practices Act in Section 38-1305(4) directs IDL to “achieve coordination among state agencies which are concerned with the forest environment.” In addition, the rules for the Forest Practices Act (IDAPA 20.02.01.020.04) state, “The director shall consult with other state agencies and departments concerned with the management of forest environment where expertise from such agencies or departments is desirable or necessary.”

Similarly, the Idaho Forestry Act allows cooperation with other agencies in I.C. 38-104.

DEQ has the opportunity under existing statutes and rules to ask for improvements to IDL’s rules governing prescribed fires and air quality but does not need to create a duplicative process for landowners and operators to comply with.

In fact, this approach is supported by DEQ’s existing prescribed burning rule in section 614.01.a which states, “The Department will seek interagency agreements to assure permits or plans issued by agencies referred to in Subsection 614.01.a. provide adequate consideration for controlling smoke from prescribed burning.”

One option may be for the IDL to address smoke mitigation similarly to how the Forest Practices Act treats “watershed impacts resulting from cumulative effects.” These regulations can be found in I.C. 38-1304(8) and require the director to appoint an “interdisciplinary task force” to advise IDL regarding measures for controlling cumulative effects. This process is further refined in IDAPA 20.02.01.031 where the requirements are encouraged, but not mandated.

IACI is also concerned that draft 3 of the proposed rule will have a harmful impact on the MT/ID Airshed Group, which has been working well for several decades. By requiring all permitting to go through DEQ, the Airshed Group becomes irrelevant to the process. We should not replace a public/private voluntary initiative that is working with a cumbersome new regulatory process that duplicates processes already in place by another agency.

IACI would be happy to outline our many specific concerns with the draft 3 of the proposed rule, however we do not believe that to be essential to these comments given our position that the rule is unnecessary.

Thank you for the opportunity to comment on the proposed rules. IACI again recommends that DEQ not proceed with the negotiated rulemaking and look instead to partner with IDL in an advisory role to update their existing rules.

Sincerely,



Alex LaBeau  
President

cc: Alan Prouty, Chair, IACI Environment Committee  
Sam Eaton, Office of the Governor  
Alex Adams, Director, Division of Financial Management  
Dustin Miller, Director, Idaho Department of Lands