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October 20, 2020

VIA EMAIL: 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:

Idaho Forest Group (“IFG”) is, as you may know, a family-owned forest products business with mills located throughout northern Idaho, in Athol, Chilco, Grangeville, Laclede, Lewiston, and Moyie Springs, along with another mill in St. Regis, Montana. IFG owns approximately 35,000 acres of timberland in Idaho, but relies primarily on private, state and federal timber sales for most of the log supply to its mills. Accordingly, while IFG does occasionally perform slash pile or broadcast burning, it relies on the industry supply chain of logging contractors and land resource managers to do those important jobs, as part of each timber sale or good forest management. This is why IFG has been following the captioned rulemaking regarding smoke from prescribed fire and slash pile burning.

IFG is also a member of the Idaho Association of Commerce and Industry (IACI). As such, IFG is aware of the Comment letter on this same Docket sent by IACI to you on or about October 20, 2020. IFG concurs in that letter but will not repeat each of its points. Instead, IFG submits these more general, supplemental comments:

1. Idaho management of Forest Practices has historically been done, and done effectively, by the Idaho Department of Lands (IDL). IDL’s current statutory and regulatory structure includes managing “air” and “smoke,” as well as interagency coordination as needed, so IFG is optimistic that the goal of the present rulemaking can be achieved through IDL.
2. Any new regulation which makes slower or more difficult the completion of a timber harvest--slash pile burning being the traditional final step before payment-- means that logging contractors’ payment will be delayed. This is unfair to a hard-working industry, most of whom are small or family run businesses.
3. New government regulatory programs, even for laudable goals, run contrary to Idaho’s concerted and nation leading efforts to reduce state regulation. The Governor has taken the



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national stage in this regard and, from what we can tell, the Legislature is of like mind.

4. If a large new governmental program were needed in Idaho, one would expect an authorizing statute to support it, to include criteria and metrics, plus a grant of authority for IDEQ to promulgate rules. Here, by IDEQ concession, the predicate for the instant rulemaking is another IDEQ rule, not a statute. That rule is one sentence long, cites no supporting Idaho statute, and cites no criteria or metrics for the new program. See IDAPA 58.01.01.614.02(b) (“The Department will develop and put into effect a Smoke Management Plan for Prescribed Burning consistent with the purpose of Sections 600 through 616.”)

5. The proposed regulations (Draft No. 3) are lengthy and detailed; however, in addition, IDEQ contemplates publishing a 100+ page Field Guide. This Field Guide would expressly not have the force of law, but purports to provide industry with valuable guidance on which it can and should rely. IFG appreciates that this two-document approach is well intended. However, IFG is concerned that these two source documents, addressing one new, detailed and complex program, will be inconsistent as applied in a case by case context. We understand, too, that some Legislators are also skeptical of circumventing law via guidance documents, believing that government should speak through one definitive and reliable source having the force of law, which is accessible to the public. That would be a statute or a rule—which the Legislature can review and revise as needed—but that is not true for “guidance” documents. There is too much potential for confusion and inconsistent interpretation between “guidance” and law.

There may be other issues and concerns, but these five points together with IACI’s Comments convey a sense for where Idaho Forest Group stands on this Docket at this time. Thank you for your consideration of these Comments.

Sincerely,

Tom Schultz  
VP, Resources & Government Affairs