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RE: DEQ Negotiated Rule Draft No. 3 - Rules for the Control of Air Pollution in Idaho/prescribed burning, Docket No. 58-0101-1901

Dear Mr. Boyle:

Thank you for the opportunity to comment on the Idaho Department of Environmental Quality's (DEQ) preliminary draft rule regarding the DEQ Negotiated Rule Draft No. 3 - Rules for the Control of Air Pollution in Idaho/prescribed burning, Docket No. 58-0101-1901 (hereafter "Draft Rule No. 3").

We would like to thank the Department and staff for the inclusive process prior to the release of Draft Rule No. 3, and in particular, DEQ data on smoke conditions in Idaho's airsheds. However, we continue to seek the specific data regarding smoke conditions as a result of prescribed fire that the draft rule seeks to remedy. Such information would help us better understand how significant changes to current operations will be responsive to occurrences when air quality has reached levels of non-attainment from prescribed fire. To date, DEQ data does indicate degraded air quality in regions where prescribed fire is occurring, but the air quality matrices do not delineate the sources of air pollution that would satisfy the justification for substantial changes to the regulatory mechanisms guiding legal open burning on Idaho's forested landscapes.

As we have commented on in previous iterations of the draft rule, large industrial landowners have voluntarily participated in the Montana-Idaho Airshed Group since the 1990s. Created in 1978, the MT/ID Airshed Group—consisting of representatives from the forest products industry and federal, state, and local agencies—manages the daily impacts of smoke generated in the two-state area from prescribed burning to meet the requirements of the Clean Air Act. Numerous statements for the record attest, and available evidence confirms, the MT/ID Airshed Group process is both highly successful at ensuring smoke abatement for participating landowners and very efficient for government and landowners to implement.

628. Recognized Smoke Management Group Burning.

While Draft Rule No. 3 includes important provisions acknowledging voluntary airshed groups ("recognized smoke management groups"), language for certification of such groups would be duplicative to the MT/ID Airshed Group's process while adding additional compliance requirements for participating members.

Referring to the draft rule in particular, section 628.01 requires that recognized smoke management groups have an operating guide and procedures that meet or exceed designated burning day provisions in section 632.02 set by DEQ. Mandating adherence to DEQ permitted burn days supplants MT/ID Airshed Group's foundational purpose and violates the necessary operating flexibility that allows the group to function effectively for proper burner coordination and smoke abatement.

Section 628.01 also requires that recognized smoke management groups have an operating guide and procedures that meet or exceed limitations on burning in section 632.03 delegating adherence to DEQ-mandated ignition limitations and subjecting recognized smoke management groups to public health considerations outside the scope of their designated missions. For instance, under certain burn conditions, recognized smoke management groups would be required to cease ignitions if “smoke is adversely impacting smoke sensitive areas or institutions with sensitive populations.” The MT/ID Airshed Group is neither modeled for nor qualified to properly judge the impact of smoke on sensitive areas or to institutions with sensitive populations. The lack of this mission and qualifications would necessitate complete abrogation to DEQ for compliance with ignitions under the proposed rule.

628.01.b of the draft rule would require “collaboration” between recognized smoke management group and DEQ. However, the draft rule neither defines “collaboration” nor identifies a process for conflict resolution should differences emerge between the two interests. Given the certification requirements described above, we must conclude that DEQ envisions the state as the final arbiter of burn day decisions.

Idaho Prescribed Fire Smoke Management Field Guide.

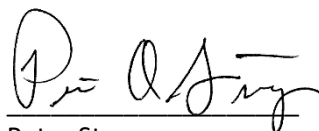
While Draft Rule No. 3 comprises 12 pages, much of the draft rule’s compliance guidance is outlined in a 109-page field guide. The field guide contains sweeping compliance direction that would subject all burners to a rule matrix that requires no public approval process and could lead to confusing, inadequate, and inconsistent enforcement for burners large and small.

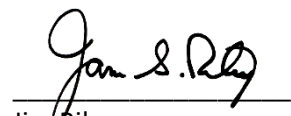
For the reasons outlined above, we find Draft Rule No. 3 to be an unacceptable rulemaking for Idaho’s regulated public. As we have indicated in previous comment periods, we encourage DEQ explore a process that is complimentary with other areas of policies regulated by Idaho’s forestry laws in coordination with the Idaho Department of Lands (IDL). As DEQ presented at the April 9, 2019, public meeting, IDL is the lead agency currently regulating prescribed fire operations in Idaho. In particular, we would direct DEQ to IDAPA 20.02.01 – Rules Pertaining to the Idaho Forest Practices Act where IDL is required to coordinate with other relevant state agencies in implementing and enforcing best management practices for environmental compliance. We have long supported provisions in IDAPA 20.02.01 that provide regulatory guidance to forestland owners on best management practices associated with water quality protection measures for Idaho’s waterways and wetlands. We would suggest that a similar approach for Idaho’s air quality objectives be explored for smoke dispersion associated with prescribed fire.

We write on behalf of Bennett Lumber Products Inc., Hancock Forest Management, Molpus Woodlands Group, and Stimson Lumber Company.

Thank you for allowing us to comment on Draft Rule No. 3.

Sincerely,


Peter Stegner
Principal
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Jim Riley
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