

January 8, 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. 2)

Dear Ms. Wilson:

The Idaho Association of Commerce & Industry (IACI) appreciates the opportunity to provide comment on the above-referenced rule. The Idaho Association of Commerce and Industry has significant reservations regarding the proposed rules. The conflict between the proposed rule and current practices with regard to requirements in the Idaho Forest Practices Act administered by the Idaho Department of Lands (IDL) will create confusion in the forestry industry. The proposed processes also seem significantly burdensome for small operators that will be subject to onerous regulations with little ability to comply.

The proposed rule modifies the current rule by requiring operators who have a permit with another agency (i.e. IDL, USDA, US Forest Service) to also comply with DEQ's Smoke Management Plans. This is a substantial increase in DEQ's regulatory oversight with no identifiable legislative directive or need. This proposal inserts DEQ into areas traditionally overseen by other agencies and creates inherent conflicts with existing practices.

We understand that IDEQ and IDL have engaged in constructive dialogue in the past few months, which we applaud. We hope and recommend that the two agencies continue working together, to minimize conflict and confusion within the industry.

If DEQ feels they need a permit process for operators that do not have a permit from another agency to comply with the current rule, then they should pursue that avenue and not require companies already exempted by the current rule to obtain a new permit.

The proposed rule is unworkable for the following several reasons:

1. There is currently no adequate alternative for slash remediation other than burning for small operators/landowners. DEQ has not structured the proposed rule to accommodate the needs of the small operators to comply with Forest Practices Act requirements from IDL. The proposed rule defines "Large Volume Pile Burning" as 1200 cubic feet. In practice, this equates to an approximate volume of four piles 3'x8'x12', or approximately

four dump truck loads. This will cause most, if not all, commercial forest operations to be subject to the requirements of the rule.

2. IDL Rules governing the Forest Practices Act define “Prescribed Fire” exactly as DEQ proposes to define “Prescribed Burning”. There has been some discussion that this may be confusing for operators that are used to dealing with the IDL rules. Where possible the terminology should remain the same.
3. The proposed rule contemplates DEQ designing a website that will list when burns are approved. More than likely this notification needs to be in multiple formats from DEQ. If an operator is on a job site in remote Idaho it is highly likely they will not have access to the website.
4. DEQ states in their FAQ released after the last meeting their intention for “burners who are members in good standing of a ‘recognized smoke management group’ to obtain approval from that group and not obtain a second approval from DEQ”. DEQ also states that “the current process...is for DEQ and the MT/ID Airshed Coordinator to collaborate on final burn day decisions.” However, the actual draft rule in section 631 states, “All major burners shall coordinate annually with the Department. This coordination is in addition to registering and requesting to burn.” There is no further language as to what “coordination” will mean, and “requesting to burn” seems to contradict the statement that DEQ will not have a role in approving burn plans for those who are members of a Smoke Management Group.
5. We have heard that the Clearwater-Potlatch Timber Protection Association as well as large private landowners had issues in the past with getting burn permission through DEQ due to inadequate timely response. This has led to significant delays on burn operations which have postponed burn operations into successive years and delayed reforestation efforts. If DEQ is mandating these changes, DEQ should develop a system to handle these complications prior to implementation.
6. DEQ lays out its Burn Decision Criteria in section 633 of the proposed rule, including (d) “Additional smoke management factors necessary for the Department to make a burn decision...” This type of open-ended authority leaves operators unable to discern what conditions or information is applicable for requests or how their decisions will be adjudicated should a problem arise.
7. DEQ also proposes a new training program for “burn managers” and requires several records to be kept. The record-keeping is an unnecessary burden for small operators, and it is unclear what the need is for such retention. The training requirement should also be made clearer so that operators understand the requirements, cost and implementation timeline. It is also unclear what the penalty would be for a violation of the rule.
8. The proposed rule also requires operators to, “submit, and implement” a communications plan to the Department”. It is unclear what type of plan this will be, and what type of a burden it will be on small operators. If DEQ is going to require a plan, it seems it should fall to DEQ to develop a communications plan.
9. There are references within the rule that note impacts on “sensitive populations”. Words such as “adversely impacting” and “minimizing” in reference to these populations could

have significant impact on operators, and are sufficiently vague to create multiple avenues for abuse of the rule.

10. Finally, more discussion needs to occur about how Smoke Management Groups and DEQ utilize a “collaborative process” to “agree on final burn decisions.” Currently DEQ serves in an advisory capacity to these groups, and this appears to move more authority to DEQ for how these groups operate. IACI is concerned that DEQ may choose to adopt a position as the final arbiter of any disagreements that may exist after the collaborative process has occurred.

Thank you for the opportunity to comment on the proposed rules. IACI again recommends that DEQ not proceed with the negotiated rulemaking until such time as there is agreement with the IDL. In addition, the aforementioned problems outlined in this letter should be clarified in total. Any proceeding with a formal rulemaking would seem premature otherwise.

Sincerely,



Alex LaBeau
President

cc: Alan Prouty, Chair, IACI Environment Committee