

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, February 07, 2024

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Burtenshaw, Vice Chairman Adams, Senators Guthrie, Den Hartog, Harris, Okuniewicz, Schroeder, Semmelroth, and Taylor

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Burtenshaw** called the meeting of the Senate Resources and Environment Committee (Committee) to order at 1:30 p.m.

RS 30908C1 **Relating to the Department of Lands. Senator Harris** explained this legislation removed the responsibility of the Office of the Attorney General to provide legal representation to the Idaho Department of Lands (IDL) and allowed them to hire or contract their own legal counsel. This addressed a perceived conflict of interest, as the Attorney General was a member of the Idaho State Board of Land Commissioners, who provided direction to the Department of Lands.

MOTION: **Senator Den Hartog** moved that **RS 30908C1** be sent to print. **Senator Schroeder** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL REAPPOINTMENT VOTE: **Senator Den Hartog** moved to send the Gubernatorial Reappointment of Tammy Overacker of Salmon, Idaho to the Idaho Outfitters and Guides Licensing Board to the floor with the recommendation that she be confirmed by the Senate. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL REAPPOINTMENT VOTE: **Senator Harris** moved to send the Gubernatorial Reappointment of Ray Hinchcliff of Driggs, Idaho to the Oil and Gas Conservation Commission to the floor with the recommendation that he be confirmed by the Senate. **Senator Schroeder** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL REAPPOINTMENT VOTE: **Senator Schroeder** moved to send the Gubernatorial Reappointment of Betty Coppersmith of Eagle, Idaho to the Oil and Gas Conservation Commission to the floor with the recommendation that she be confirmed by the Senate. **Senator Den Hartog** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT VOTE: **Senator Taylor** moved to send the Gubernatorial Appointment of Margaret Chipman of Weiser, Idaho to the Oil and Gas Conservation Commission to the floor with the recommendation that she be confirmed by the Senate. **Senator Den Hartog** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT VOTE: **Senator Den Hartog** moved to send the Gubernatorial Appointment of Marc Haws of New Plymouth, Idaho to the Oil and Gas Conservation Commission to the floor with the recommendation that he be confirmed by the Senate. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT AND REAPPOINTMENT VOTE: **Senator Harris** moved to send the Gubernatorial Appointment and Gubernatorial Reappointment of Jennifer Riebe of Caldwell, Idaho to the Oil and Gas Conservation Commission to the floor with the recommendation that she be confirmed by the Senate. **Senator Adams** seconded the motion. The motion carried by **voice vote**.

**PASSED THE
GAVEL:**

**DOCKET NO.
58-0101-2301**

Chairman Burtenshaw passed the gavel to Vice Chairman Adams.

Rules for the Control of Air Pollution in Idaho - Proposed Rule. Tiffany Floyd, Air Quality Division Administrator, Idaho Department of Environmental Quality (DEQ), referred the Committee to the 2024 Senate Resources and Environment Committee Pending Rules Review Book posted on the Idaho Legislature website, starting on page 255. She explained this rulemaking updated federal regulations incorporated by reference as mandated by the U.S. Environmental Protection Agency (EPA). It also updated citations to other federal regulations necessary to retain state primacy of Clean Air Act programs. This year's incorporation included changes made to the Code of Federal Regulations (CFR) as of July 1, 2023. The administrative actions most relevant to Idaho were:

- EPA approved Idaho's Implementation Plan which updated the incorporation by reference of federal regulations from last year.
- EPA approved Idaho's Board of Environmental Quality composition requirements.

EPA also took additional actions related to court orders and required risk and technology reviews for some specific sources of pollution. The most relevant actions were:

- For boilers and process heaters, EPA revised emission limits per a court order and made technical clarifications and corrections.
- For paint stripping operations, EPA did not change emission limits, but made clarifications, and required electronic reporting.
- For the surface coating operations, EPA revised emission limits for volatile organic compounds to reflect updated control technologies.

EPA also updated regulations for source testing of emissions under various rules. This included correcting typographical and technical errors, updating outdated procedures, and adding clarity and consistency among monitoring requirements. These revisions improved the quality of data but did not impose new requirements on facilities, owners, or operators. The definition of "excess emissions" was added to section 130, while also moving the terms and definitions into a list and alphabetizing them for easier reading.

DISCUSSION:

Senator Den Hartog asked how DEQ notified the industry about changes and their impact. **Ms. Floyd** responded that they do this in a number of ways, including utilizing environmental consulting firms, utilizing a Boise State University small business assistance program that published newsletters, and initiating their own outreach.

MOTION:

Senator Harris moved to approve **Docket No. 58-0101-2301**. **Senator Den Hartog** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
58-0107-2301**

Rules Regulating Underground Storage Tank Systems (ZBR Chapter Rewrite, Fee Rule) - Proposed Rule. Michael McCurdy, Waste Management and Remediation Division Administrator, DEQ, referred the Committee to the 2024 Senate Resources and Environment Committee Pending Rules Review Book posted on the Idaho Legislature website, starting on page 261. He explained the authority for these rules came from the Idaho Underground Storage Tank Act, Idaho Code § 39-88. This negotiated rulemaking was initiated in 2023 in response to Executive Order 2020-01, Zero Based Regulation (ZBR). He provided a summary of the negotiated rulemaking process for this rule. There were several sections revised to simplify language, or remove unnecessary language and attempt to be more clear. The more substantive modifications were:

- Section 010, Definitions, page 272-274. Removed the definitions that were identified in statute and referred to Idaho Code sections within the rule. Also included references to other rule chapters where definitions were cited in those rules.
- Deleted Section 300.01, Requirements, page 278. Removed this language as DEQ fulfilled this requirement, and the requirement was in the statute, Idaho Code § 39-8807.
- Deleted Section 400, Inspections, page 279. This section was never used and was removed.
- Deleted Section 600, Petroleum UST Database, page 282. Removed this language as DEQ fulfilled this requirement. The database was available to the public on the DEQ website.

MOTION:

Chairman Burtenshaw moved to approve **Docket No. 58-0107-2301**. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
58-0108-2301**

Idaho Rules for Public Drinking Water Systems (ZBR Chapter Rewrite, Fee Rule) - Proposed Rule. **Jerri Henry**, Drinking Water Protection and Finance Administrator, DEQ, referred the Committee to the 2024 Senate Resources and Environment Committee Pending Rules Review Book posted on the Idaho Legislature website, starting on page 284. She explained changes to this rule represented compliance with Executive Order No. 2020-01, ZBR. She provided a summary of the negotiated rulemaking process for this rule. For this rulemaking, DEQ updated their rules to adopt by reference the federal regulations. They did not propose any new regulations not regulated by the federal government and no changes were made to be more stringent than they federal regulations. There were two sections of the rules that were not expressly regulated by the federal government. Modifications were made to these sections for clarity and to address public comments:

1. The primacy requirement outlined in the Code of Federal Regulations - 40 CFR 142.10(b)(5) was accomplished through Idaho Code § 39-118, which required the review and approval of plans and specifications prior to construction or modification of a public water or wastewater system, and through the corresponding engineering standards in rule sections 500-552.
2. The multiple barrier approach to prevent contamination of distribution systems from cross connections with non-potable water was addressed in the cross-connection control section.

No changes to fees or fee structures were introduced. During the process of negotiated rulemaking, EPA promulgated the Lead Copper Rule Revisions. Through consultation with the Drinking Water Advisory Committee and the Water Utility Council, both of which represent public water systems and communities throughout the state, DEQ determined it was in the best interest of state public water systems to adopt the rule. This allowed DEQ the ability to enter into compliance schedules to provide additional time and flexibility when appropriate. Therefore, DEQ adopted the Code of Federal Regulations, as of July 1, 2023, which encompassed the Lead and Copper Rule Revisions effective December 2021.

Tyler Fortunati, Drinking Water Bureau Chief, DEQ, reviewed the sections of **Docket Number 58-0108-2301** that underwent important or significant changes. The nine areas of proposed changes were as follows:

1. Definitions in section 003 were removed if they existed in Idaho Code or the Code of Federal Regulations.
2. Section 003.27, Like-Kind Replacement, was added to provide clarity to other sections of the rules, and also reflected how DEQ historically applied this term.
3. Section 003.31, Material Modification, was amended to provide clarity on when public water systems must comply with the requirements of Idaho Code § 39-118, submittal of plans and specifications, and associated engineering planning and assessment. The amendment also provided context on how DEQ had historically applied this definition.
4. Section 003.74, Substantial Modification, was amended to provide the specific date of May 8, 2009, which was when the definition of Substantially Modified became effective. The amendment also provided context to how DEQ had historically applied this definition.
5. Section 007.04, regarding billing of fee invoices, was amended to allow DEQ to deliver electronic drinking water fee invoices.
6. Section 302.03.c, regarding significant deficiencies in a distribution system, was amended to focus on minimum system pressure of 20 psi. DEQ considered this operational requirement of greater potential public health significance than the current rule. Primacy requirements for the Safe Drinking Water Act required the eight significant deficiencies outlined in section 302.03 be specified in state rules.
7. Section 350, regarding control of lead and copper, incorporated the recent Lead and Copper Rule Revisions finalized by EPA. This updated incorporation allowed DEQ to apply for primacy of the Lead and Copper Rule Revisions from EPA and maintain state oversight of the Safe Drinking Water Act.
8. Section 450, regarding the Use of Non-Centralized Treatment Devices, was reorganized and streamlined to help facilitate a smoother application process for these devices.
9. Section 554.04, regarding Water Operator License Upgrade Allowance, was added to allow drinking water distribution system operators a 12-month period to meet increased licensure requirements triggered solely by population increases.

DISCUSSION:

Senator Taylor asked if the waivers from sampling requirements added to section 004.01.a, page 421, were based on previous analytical data. **Mr. Fortunati** responded those changes were moved from a prior section of the rules, and DEQ consolidated all waivers, variances, and exemptions into section 004.

MOTION:

Chairman Burtenshaw moved to approve **Docket No. 58-0108-2301**. **Senator Den Hartog** seconded the motion. The motion carried by **voice vote**.

Rules Regulating the Idaho Pollutant Discharge Elimination System Program (ZBR Chapter Rewrite, Fee Rule) - Proposed Rule. Mary Anne Nelson, Surface and Wastewater Division Administrator, DEQ, referred the Committee to the 2024 Senate Resources and Environment Committee Pending Rules Review Book posted on the Idaho Legislature website, starting on page 550. She explained DEQ had full authority for the Idaho Pollutant Discharge Elimination System (IPDES) program. This docket updates federal regulations incorporated by reference with the Federal Register as of July 1, 2023. Summary of changes were as follows:

- Section 000, language was reduced to simply reference the relevant Idaho Code authorities.
- Section 002.02, confidentiality of records was removed as it was duplicative of Idaho Code § 74-114.
- Section 003.01, Incorporation by Reference was removed as it was not necessary.
- DEQ updated dates for incorporation by reference to reflect the CFR as of July 1, 2023. There were four federal rules changed between July 1, 2020, the date being replaced, and July 1, 2023. These were in sections 003.01.t, 003.01.w, and 003.01.z.
- In section 003.01.bb, DEQ updated the definition of Waters of the U.S. to reflect Idaho's current position on this definition.
- Two unnecessary sections were removed at the direction of the Department of Financial Management, section 005, Written Interpretations, and section 006, Office Hours, Mailing Address, and Street Address.
- Definitions in section 010. were removed that were already in Idaho Code, other chapters, or not used within this rule chapter, and definitions that already existed in CFR were updated to reflect the appropriate CFR reference rather than repeat the definition.
- Section 010.44 added the definition of Integrated Planning as requested by the Association of Idaho Cities.
- Section 105.20 included the addition of items required for an integrated plan application submittal.
- Section 110, Fee Schedule Changes, an effective date for payment of annual fees was removed, the date for billing and expected payment was changed to reflect how the process works effectively with municipal fiscal year planning, and language regarding payment plan requirements removed strict language and replaced broader language.
- Section 370.04, Pretreatment Standards, and section 380.03, Sewage Sludge, were moved to section 003.02, Interpretation of Terms.
- Section 370.05, Pretreatment Standards, was removed. This subsection indicated exceptions from incorporation by reference.

She provided a summary of the negotiated rulemaking process for this rule. This rulemaking did not impose or increase any fees. DEQ did not anticipate additional costs to the regulated community due to these changes. These rules regulated an activity regulated by the federal government but were neither broader in scope nor more stringent than those imposed by the federal government.

MOTION: **Chairman Burtenshaw** moved to approve **Docket No. 58-0125-2301**. **Senator Schroeder** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Vice Chairman Adams passed the gavel to Chairman Burtenshaw.

ADJOURNED: There being no further business at this time, **Chairman Burtenshaw** adjourned the meeting at 2:45 p.m.

Senator Burtenshaw
Chair

Shelly Johnson
Secretary