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Legislative Services Office

Idaho State Legislature

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MEMORANDUM

TO: Rules Review Subcommittee of the Senate Health & Welfare Committee and the House Environment, Energy & Technology Committee

FROM: Deputy Division Manager - Katharine Gerrity

DATE: September 16, 2016

SUBJECT: Department of Environmental Quality

IDAPA 58.01.01 - Rules for the Control of Air Pollution in Idaho - Proposed Rule (Docket No. 58-0101-1601)

IDAPA 58.01.01 - Rules for the Control of Air Pollution in Idaho - Proposed Rule (Docket No. 58-0101-1604)

The Department of Environmental Quality submits notice of proposed rule at IDAPA 58.01.01 - Rules for the Control of Air Pollution in Idaho. The two dockets are related to one another. As a matter of background, the department notes that the Crop Residue Burning (CRB) Program has been implemented since 2008. The department states that prior to approving a crop residue burn, it must determine that the air quality is not exceeding 75% of any National Ambient Air Quality Standard (NAAQS) and that air quality is not projected to exceed such level during the next 24 hours. The department adds that fine particulate matter is the pollutant most directly affected by crop residue burning. The department goes on to state that there are days when fine particulate matter is not a concern but ozone concentrations exceed or are projected to exceed 75% of the ozone NAAQS.

The department states that in 2015, the EPA reduced the ozone NAAQS from 75 ppb to 70 ppb. As required, that reduction is included in the department's incorporation by reference in docket 58-0101-1603, LSO's analysis of which was completed on 8-24-16. Due to this reduction, the department states that there would be fewer days when it could approve crop residue burning even though the weather conditions exhibit good smoke dispersion characteristics and staff expect the burns to have minimal impact on ambient ozone concentrations. As a result, the department notes that burning may not be allowed on good burn days even when the burn is not predicted to cause or significantly contribute to a violation of the ozone NAAQS.

The department goes on to state that through negotiated rulemaking, it developed a proposed rule (Docket 58-0101-1601) that gives it the authority to allow burning when ozone levels are not exceeding, or expected to exceed, 90% rather than 75% of the ozone NAAQS. The department notes that as an outgrowth of the negotiations, it also developed an interim rule that allows the CRB Program to continue operating under the 2008 ozone NAAQS until EPA approves the 90% ozone level in a revised State Implementation Plan (SIP) (Docket 58-0101-1604). The department adds that using the 2008 ozone NAAQS would maintain the status quo for the 2017 burn season until EPA approves the SIP revision. The department anticipates EPA approval by February 28, 2018. The department goes on to state that without using the 2008 ozone NAAQS, the reduction in burn

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days could cause considerable economic hardship to grass seed growers for no environmental or public health benefits.

The department also notes that before its board can adopt the rule, Section 39-114, Idaho Code, will need to be revised for consistency. The department will be submitting proposed legislation during the 2017 session.

The department confirms that the rule does not regulate an activity not regulated by the federal government, nor is it more stringent than federal regulations. The rulemaking appears to be authorized pursuant to Sections 39-105, 39-107 and 39-114, Idaho Code.

cc: Department of Environmental Quality
Paula J. Wilson