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MEMORANDUM

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

FROM: Principal Legislative Research Analyst - Katharine Gerrity

DATE: August 14, 2014

SUBJECT: Department of Environmental Quality

IDAPA 58.01.01 - Rules for the Control of Air Pollution in Idaho (Docket No. 58-0101-1403)

IDAPA 58.01.05 - Rules and Standards for Hazardous Waste (Docket No. 58-0105-1401)

1. IDAPA 58.01.01 - Rules for the Control of Air Pollution in Idaho

The Department of Environmental Quality submits notice of proposed rule at IDAPA 58.01.01 - Rules for the Control of Air Pollution in Idaho. According to the department, the rulemaking is necessary to ensure Idaho's rules are consistent with federal regulations. The department notes that the rulemaking updates citations to federal regulations incorporated by reference to include those revised as of July 1, 2014.

The department notes that negotiated rulemaking was not conducted due to the simple nature of the rulemaking and because the department has no discretion with respect to adopting the federal regulations that are necessary for EPA approval of Idaho's Title V Operating Permit Program. The department confirms that the rule does not regulate an activity not regulated by the federal government and is not broader in scope or more stringent than federal regulations. The rulemaking appears to be authorized pursuant to sections 39-105 and 39-107, Idaho Code.

2. IDAPA 58.01.05 - Rules and Standards for Hazardous Waste

The Department of Environmental Quality submits notice of proposed rule at IDAPA 58.01.05 - Rules and Standards for Hazardous Waste. According to the department, these rules are updated annually to maintain consistency with EPA federal regulations implementing RCRA as directed by the Idaho Hazardous Waste Management Act. The department notes that the proposed rule updates the federal regulations incorporated by reference to include those revised as of July 1, 2014, and makes technical corrections as recommended in the most recent EPA Incorporation by Reference Guidance. The department notes that the state has historically adopted both required and optional federal regulations so that Idaho's hazardous waste rules are the same as federal requirements. The department adds that optional federal regulations usually allow more flexibility to

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the regulated community. The department also states that required federal regulations are necessary to maintain program primacy.

The department states that negotiated rulemaking was not conducted due to the simple nature of the rulemaking and because the department has no discretion with respect to adopting EPA's federal regulations implementing RCRA as directed by the Idaho Hazardous Waste Management Act. The department confirms that the rule does not regulate an activity not regulated by the federal government and is not broader in scope or more stringent than federal regulations. The rulemaking appears to be authorized pursuant to chapters 44 and 58, Title 39, Idaho Code, and is in compliance with 40 CFR 271.21(e) and section 39-4404, Idaho Code, which require DEQ to adopt amendments to federal law as proposed under the docket.

cc: Department of Environmental Quality
Paula J. Wilson