

<p>Docket Number: <u>58-0101-0801</u> Effective Date: <u>2009 Sine die</u> Rules Title: <u>Rules for the Control of Air Pollution in Idaho</u> Agency Contact and Phone: <u>Martin Bauer, 373-0440</u></p>	<p style="text-align: center;">Public Notice</p> <p>Hearings: [X] Yes [] No Locations and Dates: Boise, May 2, 2008 Written Comment Deadline: May 2, 2008</p>
<p>Descriptive Summary of Rule: The purpose of this rulemaking is to implement the provisions of House Bill 557, wherein the 2008 Idaho Legislature approved a program for the open burning of crop residue to be administered by the Idaho Department of Environmental Quality (IDEQ) and repealed the Smoke Management and Crop Residue Disposal Act previously administered by the Idaho State Department of Agriculture (ISDA). Field burning has been prohibited in Idaho since January 2007 as a result of a 9th Circuit Court of Appeals ruling. In December 2007 representatives of farming organizations, Safe Air for Everyone (SAFE), ISDA, and IDEQ agreed on various components of a program for the open burning of crop residue. House Bill 557 and this rule address the central components of that agreement.</p> <p>This rule is modeled after the Nez Perce smoke management program which prohibits field burning if air quality levels exceed or are expected to exceed 75% of any national ambient air quality standard. Farmers are required to obtain a notice of approval to burn, provide notice of proposed burns, and pay a registration fee based upon the number of acres to be burned. The rule contains provisions to ensure that the public has ready access to this information. In addition, IDEQ is required to conduct ongoing and annual reviews of the program.</p> <p>This rule was adopted as a temporary rule by the Board in March 2008 and is currently effective. Adoption of the temporary rule did not in itself authorize the open burning of crop residue in Idaho. DEQ was also required to develop a revised State Implementation Plan (SIP) and obtain approval of the SIP revision from the U.S. Environmental Protection Agency (EPA). DEQ developed the SIP revision, published a Notice of Comment Period and Public Hearing on the proposed SIP revision in the Idaho Administrative Bulletin on April 2 with a comment period deadline of May 2, 2008, and submitted the SIP revision to EPA on May 28, 2008. On August 1, 2008 EPA approved by final rule the SIP revision with an effective date of September 2, 2008. 73 Fed. Reg. 44,915.</p> <p>Public comments were received. The proposed rule has not been revised. DEQ recommends that the Board adopt the rule, as presented in the final proposal, as a pending rule with the final effective date coinciding with the adjournment <i>sine die</i> of the First Regular Session of the Sixtieth Idaho Legislature. The rule is subject to review by the Legislature before becoming final and effective.</p>	<p>Negotiated Rule Making: [X] Yes [] No Groups Involved: Sign-in sheets attached.</p> <p>On February 6, 2008, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 08-2, page 31, and a preliminary draft rule was made available for public review. Meetings were held on February 12, 15, and 21, 2008. Several members of the public participated in this negotiated rulemaking process by attending the meetings and by submitting written comments.</p> <p>Cost Impact: Costs To the Agency: Unknown at this time. Costs To the Regulated Community: House Bill 557 imposes the necessary fees.</p> <p>Relevant Statutes: Chapter 1, Title 39, Idaho Code and House Bill 557 (codified at Idaho Code § 39-114).</p> <p>Idaho Code § 39-107D Statement: This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.</p> <p>Idaho Code § 67-5221(1)(c) Fiscal Impact Statement: The adoption of this rule will have one time initial start-up expenses of \$186,700 as well as ongoing program costs estimated to be \$419,700 for a total impact of \$606,377 to the general fund for FY2009. All future receipts remitted to the state for field burning under this rule shall be transferred to the general fund to help with ongoing program costs. At this time, it is unknown how much funding will come from this dedicated source annually.</p>

Temporary Rule	<input type="checkbox"/> Necessary to protect public health, safety or welfare <input type="checkbox"/> Compliance with deadlines in amendments to governing law or federal programs <input type="checkbox"/> Conferring a benefit
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Section	Existing Rule Summary	Temporary and/or Proposed Rule Summary	Summary of Rule Changes Based on Public Comment	
600	Rules for Control of Open Burning	Revises reference to other rule section.	The rule has not been revised. See attached Response to Public Comments.	
601	Fire Permits, Hazardous Materials, and Liability	Revises reference to other rule section.		
602	Nonpreemption of Other Jurisdictions	Revises reference to other rule section.		
603	General Restrictions	Revises reference to other rule section.		
606	Categories of Allowable Burning	Revises reference to other rule section.		
617	Crop Residue	Replaces reference to Idaho State Department of Agriculture's crop residue burning program with reference to DEQ's crop residue burning program.		
618	Permit by Rule	New section.		
619	Registration for Permit by Rule	New section.		
620	Registration Fee	New section.		
621	Burn Determination	New section.		
622	General Provisions	New section.		
623	Public Notification	New section.		
625	Visible Emissions.	Addition of new Subsection 625.05 stating that 625 does not apply to the open burning of crop residue.		

**Rules for the Control of Air Pollution in Idaho
Docket No. 58-0101-0801**

Response to Public Comments

Commenter	Comment	DEQ Response
<p>Courtney Washburn Community Conservation Director Idaho Conservation League P.O. Box 844 Boise, ID 83701</p>	<p>The Idaho Conservation League is supportive of the negotiation process that lead to a compromise between Safe Air for Everyone (SAFE), and grower representatives. We are supportive of the agreement points that were reached. We were supportive of House bill 557 which passed the Idaho Legislature and was signed into law on March 7th, 2008. We also supported the rule docket number 58-0101-0801 that became effective on April 2, 2008.</p> <p>We are supportive of the efforts to resume crop residue burning because additional protections provide assurance that the National Ambient Air Quality Standards (40 CFR part 50) would not be exceeded, and the public health would be protected. Our main interest is the protection of public health and air quality so if at anytime it is determined that the protections are not adequate we will advocate for the revision of this program. If it is found that crop residue burning cannot be done in away that is protective of public health and air quality then will advocate for the termination of crop residue burning.</p>	<p>This comment is in support of the rule.</p> <p>DEQ intends to implement this program carefully, by critically reviewing all factors before approving a burn, monitoring many burns, and reviewing burn reports to continually find ways to improve the program for all.</p> <p>The rule has not been revised in response to this comment.</p>

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<p>Lou Dersch Twin Falls, Idaho</p>	<p>How can a fee offset any amount of air pollution, or compensate someone with respiratory health problems, or make things better for someone who can't see the mountains any more? The farmers' claims of all the benefits of burning are just plain wrong. Any plant pathologist will tell you that a field doesn't burn hot enough long enough to kill fungus spores. Burning does cause a transient spike in either potassium or phosphorus, I forgot which one. But nitrogen and the other (potassium or phosphorus) literally go up in smoke. Why else do fertilizer companies defend farmers' right to burn? I heard on the radio that most of the smoke you see is water vapor. How much water is left in grain stubble that has been cooked in the Magic Valley's late summer conditions? However much there is, does anybody really believe that in this heat and low humidity, water vapor would be visible for more than a few seconds? I've seen smoke plumes that go to the horizon.</p> <p>Granted, there is higher Kentucky bluegrass seed production in a burned field. Maybe we should switch to another species??? Or consider zeriscaping???</p> <p>My opinion is that all field burning, ditch burning, burning on farms and in town, and burn barrels should be permanently banned. Then the ban needs to be enforced with heavy fines. All those practices are outmoded holdouts from the past. Our air quality problems are not caused by La Nina or inversions or smog from LA or volcanic activity or anything else. People create the problems here and we can stop the problems here.</p> <p>Thank you for considering this.</p>	<p>DEQ appreciates the questions and concerns presented in this comment.</p> <p>Through its enactment of House Bill 557, the Idaho Legislature approved a program for the open burning of crop residue to be administered by DEQ. The \$2 per acre fee is collected to assist in the implementation of the crop burning program. DEQ intends to work closely with the farmers and the public to ensure protection of the public health and the environment.</p> <p>The rule has not been revised in response to this comment.</p>