

May 18, 2018

VIA EMAIL: paula.wilson@deq.idaho.gov

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 North Hilton
Boise, Idaho 83706-0481

Re: Idaho DEQ Negotiated Rulemaking Docket No. 58-0101-1801

Dear Ms. Wilson:

The Idaho Association of Commerce & Industry (IACI) is the leading trade association of Idaho businesses and represents hundreds of members of all sizes engaged in diverse commercial and industrial enterprises throughout the State. IACI appreciates the opportunity to submit comments on the Idaho Department of Environmental Quality (DEQ) negotiated rulemaking, Docket No. 58-0101-1801.

IACI members support DEQ's efforts to update and clarify certain air quality permitting sections through minor edits of inconsistent or outdated language as outlined in the stated purpose of this negotiated rulemaking. IACI is concerned, however, that one of the proposed changes exceeds the limited scope of the negotiated rulemaking. Our members urge DEQ to fully consider the following comments, as required under IDAPA 67-5220(2)(d), as it moves forward in the negotiated rulemaking process.

1) IDAPA 58.01.01.210.20.a: NSPS and NESHAP Sources

The proposed change to IDAPA 58.01.01.210.20.a substantively alters the existing rule and exceeds the scope of this negotiated rulemaking. IDAPA 58.01.01.210.20.a currently reads "If the owner or operator demonstrates that the toxic air pollutant *from* the source or modification is regulated by the Department at the time of permit issuance under 40 CFR Part 60, 40 CFR Part 61, or 40 CFR Part 63, no further procedures for demonstrating preconstruction compliance will be required under Section 210 for that toxic air pollutant as part of the application process." (emphasis added). Source is defined as a stationary source, which is in turn defined as "any building, structure, facility, emissions unit or installation which emits or may emit any air pollutant." IDAPA 58.01.01.006.114 and 121. The rules further define a facility as "all of the pollutant emitting activities which belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under control of the same person." IDAPA 58.01.01.006.40. Under the rule as applied today, our members are not required to undergo a DEQ Toxic Air Pollutants (TAPs) analysis when the pollutant from any building, structure, facility, emissions unit, or installation is regulated by EPA under an applicable federal New Source Performance Standards (NSPS) or National Emission Standards for Hazardous Air Pollutants (NESHAP), regardless of whether the specific emissions unit or equipment is regulated by the federal standard. This existing approach

streamlines the TAPs analysis, and conserves applicant and DEQ resources. This existing interpretation conforms to the notion that further review and regulation by DEQ is unnecessary if a TAP is already subject to regulation under federal rules, and evaluation of emissions and equipment warranting regulation was performed by EPA.

DEQ's proposed change substitutes the word "and" between pollutant and source ("...demonstrates that the toxic air pollutant *and* the source or modification is regulated..."). This change is not clerical or minor. Demonstrating that both the source *and* the pollutant are regulated by a federal standard significantly narrows the benefit of this provision. This change could expand the scope of DEQ's TAPs review for pollutants previously evaluated by EPA under NSPS or NESHAP, if the specific emissions unit and pollutant are not both regulated by the federal standard.

The proposed change is potentially confusing and requires applicants to reinterpret DEQ's meaning of source. For example, if a proposed modification of an existing source subject to a NESHAP increases emissions of a pollutant regulated by the NESHAP, but the new emissions are generated by equipment not explicitly covered by the NESHAP, then is the applicant eligible for the exemption or subject to DEQ TAPs review? Likewise, if a new source is proposed and subject to a NSPS standard, but the proposal includes emissions of a pollutant regulated by the NSPS only from equipment not covered by the NSPS, then is the applicant eligible for the exemption or subject to DEQ TAPs review? Under the current language, related definitions, and understanding of the intent, no DEQ TAPs review would be required in these examples, since the pollutant from the source is regulated by the federal standards as promulgated.

In the recent rulemaking meeting DEQ explained that the proposed change is consistent with the "original intent" of the rule and applicants are currently confused with the provision as written.¹ DEQ did not cite any contemporaneous records regarding the rule's original intent at the time of promulgation. IACI's members have successfully applied the plain language of this rule and related definitions, without confusion, since promulgation.

IACI requests that DEQ make no change at this time under this rulemaking to this section. IACI has no additional comments about this section.

2) IDAPA 58.01.01.223: Exemption Criteria And Reporting Requirements For Toxic Air Pollutant Emissions

IACI supports proposed changes, in concept, to IDAPA 58.01.01.223 since only Level I exemptions are practical for use for our members under existing rule language. However, IACI believes it is imperative to preserve the notion that controlled toxic air pollutant emissions should be allowed in consideration of exemption criteria, therefore, rather than wholly deleting Level II and III exemptions, IACI recommends moving the language from the Level III exemption criteria (223.04.b.) to a new sub-section in the Level I exemption criteria (223.02.c), as shown below. The proposed changes would streamline and clarify the exemption process, thereby falling within the limited scope of this rulemaking.

¹ See, Public Meeting on The Rules for the Control of Air Pollution in Idaho, Docket No. 58-0101-1801 before the Idaho Dept. of Environmental Quality (May 3, 2018).

02. Level I Exemption. To obtain a Level I exemption, the source shall satisfy the following criteria: (4-5-00)

a. The uncontrolled emission rate (refer to Section 210) for all toxic air pollutants shall be less than or equal to all applicable screening emission levels listed in Sections 585 and 586; or (4-5-00)

b. The uncontrolled ambient concentration (refer to Section 210) for all toxic air pollutants at the point of compliance shall be less than or equal to all applicable acceptable ambient concentrations listed in Sections 585 and 586; (4-5-00) or

c. The controlled emission rate (refer to Section 210) for all toxic air pollutants emitted by the source shall be less than or equal to all applicable screening emission levels listed in Sections 585 and 586.

3) IDAPA 58.01.01.210.03: Quantification of Ambient Concentrations

IACI supports DEQ's proposed changes to IDAPA 58.01.01.210.03 on the basis that the referenced screening model is no longer technically supported. Approved screening models are contained in 58.01.01.202.02, and IACI encourages DEQ to continually ensure that the approved screening models in that section remain clear and technically current.

4) IDAPA 58.01.01.404.04: Tier II Permit Revision or Renewal

IACI supports proposed changes to IDAPA 58.01.01.404.04, with the understanding that DEQ will continue to issue Tier II permits only in limited circumstances, and that Permits to Construct (PTC) will remain the preferred permitting method.

5) IDAPA 58.01.01.221-222: Category I and II Radionuclide Exemptions

IACI supports the proposed changes that would bring radionuclides into compliance with current EPA practices, and to update inaccurate carcinogenic increment figures in IDAPA 586.

6) IACI has no comment on proposed changes to IDAPA 58.01.01.006.108; IDAPA 58.01.01.210.05-.08; or IDAPA 58.01.01.586.

IACI appreciates DEQ's consideration of these comments as it works to clarify and update Idaho Air Quality Regulations. Please do not hesitate to contact us should you have any questions or concerns.

Sincerely,



Alex LaBeau
President

cc: Alan Prouty, Chair
IACI Environment Committee