

December 30, 2019

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Paula Wilson
Idaho Dept. of Environmental Quality
1410 N. Hilton
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Re: Air Quality: Docket No. 58-0101-1901- Negotiated Rulemaking for Prescribed Burning

Dear Ms. Wilson,

I attended and participated in the Prescribed Burning Negotiated Rulemaking Meeting 5, November 25th via the Lewiston meeting site. As no formal transcript was taken during the November meeting, I would like to submit a few comments on the IDEQ proposed Prescribed Burning Negotiated Rulemaking (PBNR) action.

My knowledge of the Prescribed Burning topic is derived from over 32 years as professional forester and private timberland owner (~1700 acres) in Clearwater County, 12 years as a Member of the Clearwater Potlatch Timber Protective Association (CPTPA) Board of Directors (Small Landowner (12 yrs.) and Idaho Forest Group (2 yrs.) Representative), and 2 years with the Idaho Farm Bureau Forestry Committee.

**None of the comments of this letter are to be construed to represent positions of CPTPA, Idaho Forest Group or the Idaho Farm Bureau.*

I am providing comments point by point in the attached draft rule portion of this letter, the following comments cover overall considerations impacted by the PBNR action.

- To date IDEQ has not provided evidence that regulation of Prescribed Burning is warranted due to actual impacts/ nonattainment occurrences in the field. As stated in the PBNR FAQ, "The open burning rules are designed to reduce the amount and impact of emissions, protect human health, and reduce the visibility impairment in Class I Federal Areas in accordance with the regional haze long-term strategy." IDEQ has not provided a detailed analysis of periods and locations where nonattainment of Air Quality Standards has been impacted specifically by Prescribed Burning. This information would provide information to determine the need to put into effect "a Smoke Management Plan for Prescribed Burning consistent with the purpose of IDAPA 58.01.01.600 through 614," (DEQ's open burning rule)."
- The State of Idaho requires remediation of slash generated through Forestry and Logging operations by withholding monies from the delivery of sawlogs to sawmills at the effective rate of \$3.65 per Mbf. Private landowners who undertake a logging or forest operation must

remediate the slash through removal or burning. As removal is inherently too expensive the only logical and economic method to reduce the slash concentrations is via prescribed burning or suffer the loss of the withheld funds and possibly be subject to additional costs should agency remediation be required. Typically, the remediation is required to occur within 2 years of harvest. If the PBNR proceeds as currently stipulated, PBNR rule impacts to private landowners will be significant. The impact could be alleviated by changes in the Large Volume Pile Burning definition and the pile volume designated therein. A sizeable majority of small forestry operations will exceed the stipulated 1200 cubic feet (for reference a single pile 12ft x 16ft x 6.25 ft high) burn pile allowance.

- As stipulated above, there are currently no adequate alternatives for Slash remediation other than burning for Small operators/landowners. DEQ has not structured their rule set to accommodate the need of these small operators to comply with the IDL requirements. As currently written Large burners will be prioritized over Small burners as they have the administrative capacity to accommodate the rule requirements.
- DEQ should bear the burden of communicating to the operators not vice-versa. Timely responses from DEQ will be critical to alleviate notification issues for private landowners who are undertaking prescribed burns. Adequate and effective burn windows are very limited for Private landowners. Inadequate communication will lead to significant delays on burn operations. These delays can postpone burn operations into successive years and delay reforestation efforts. IF DEQ is mandating these changes, DEQ should include a system to handle these complications before implementation.
- DEQ is not adequately defining their burn/no burn decision making “factors”. This leaves operators/ “Burn Managers” unable to discern what conditions or information is applicable for requests or how their decisions will be adjudicated should a problem arise.
- DEQ is mandating training and recertification. What are the requirements for this? Cost? Implementation time frame?
- DEQ is only utilizing a website to post decisions..... this is not adequate! Try to pull up a website in the backcountry.
- What are the punitive damages for rule violations? Unauthorized burning, failure to undergo training, exceeding burn size, record keeping, etc.

IDEQ’s charge is “To protect human health and the quality of Idaho’s air, land, and water” and “the agency is committed to working in partnership with local communities, businesses, and citizens to identify and implement cost-effective environmental solutions”.

To date IDEQ has not been able to establish why the current rules are not sufficient in current form other than the “federal mandate”. As such, this rulemaking action should cease until substantiated impacts can be provided which show a need to change the current administrative rule set. As currently written, PBNR will seriously restrict or limit the effective burn windows utilized by Private Landowners and Private Forestry Operators if it proceeds in current form. These items as well as others need to be addressed if this rulemaking process moves forward.

In addition, from an industry perspective, it is becoming more difficult to recruit and retain small forestry operators (Loggers and Road Constructors) in the forest products industry due to ancillary requirements and administrative rules which reduce operational efficiency and increase costs. DEQ and other State agencies continue to exacerbate this problem by implementing more stringent operational rules and administrative limitations with only limited consideration of the effects on operators and the efficacy of the proposal itself.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Reggear", with a long horizontal flourish extending to the right.

Mike Reggear
542 Loseth Rd
Orofino, ID 83544

Negotiated Rule Draft No. 2
Docket No. 58-0101-1901, Dated November 14, 2019

This draft includes revisions based on negotiated rulemaking meetings, review of written comments received, and collaboration between the Idaho Department of Environmental Quality and the Idaho Department of Lands.

The revisions in Section 006 are highlighted in yellow. Sections 627 through 636 were redrafted, reorganized, and inserted as clean text with no formatting or highlighting.

Written comment deadline for this draft – January 8, 2020

Rules for the Control of Air Pollution in Idaho IDAPA 58.01.01

006. GENERAL DEFINITIONS.

(BREAK IN CONTINUITY)

~~XX. **Burn Boss.** The individual who is onsite throughout the entire prescribed fire and who has the overall responsibility for the entire burn.~~

~~XX. **Burn Manager.** The individual responsible for a prescribed burn from ignition through completion.~~

~~XX. **Broadcast Burning.** A prescribed burn where fire is applied to wildland fuels within well-defined boundaries for the purpose of fuel hazard reduction and/or resource management.~~

~~XX. **Pile Burning.** A prescribed burn used to dispose of wildland fuels that result from fuel and/or resource management activities which were piled by hand or machine.~~

~~XX. **Recognized Smoke Management Group.** A membership group of prescribed burners created to accomplish wildland fuel and resource management objective burning while protecting public health and welfare. The group implements smoke management principles and meets the requirements of Sections 627 through 636.~~

Commented [RM1]: What are the limits or parameters of a prescribed burn. Days, piles, acres? In the case of a smaller operator the Burn Manager may change over the duration of the operation. Liability of the Burn Manager?

Commented [RM2]: Existing groups need to be adjusted to represent all of the new participants which will need representation if implementation of this rule set occurs.

91. **Prescribed Fire Management Burning.** The controlled application of fire to wildland fuels in either their natural or modified state under such conditions of weather, fuel moisture, soil moisture, etc., as will allow the fire to be confined to a predetermined area and at the same time produce the intensity of heat and rate of spread required to accomplish planned objectives, including: (5-1-94)

- a. Fire hazard reduction; (5-1-94)
- b. The control of pests, insects, or diseases; (5-1-94)
- c. The promotion of range forage improvements; (5-1-94)
- d. The perpetuation of natural ecosystems; (5-1-94)

Commented [RM3]: 006.091 should utilize common terminology and practices to maintain continuity between similar rules. IDAPA- Idaho Forest Practices Act Title 38, Chapter 13.071 - Prescribed Fire doesn't not reference "Prescribed Burning". 13.071.01 specifically references smoke management under Prescribed Fire. Terms should remain common to alleviate confusion.

e. The disposal of slash and woody debris resulting from a logging operation, the clearing of rights of way, a land clearing operation, or a driftwood collection system; (5-1-94)

f. The preparation of planting and seeding sites for forest regeneration; and (5-1-94)

g. Other accepted natural resource management purposes. (5-1-94)

(BREAK IN CONTINUITY)

~~112. Smoke Management Plan. A document issued by the Director to implement Sections 606 through 616, Categories of Allowable Burning. (5-1-94)~~

~~113. Smoke Management Program. A program ^{of system} whereby wherein meteorological information, fuel conditions, fire behavior, smoke movement and atmospheric dispersal conditions are used as a basis for to scheduling the location, amount and timing of open burning operations so as, including prescribed burning, to minimize the impact of such burning on identified smoke sensitive areas and populations and to ensure smoke impacts do not cause or contribute to a violation of the National Ambient Air Quality Standards (NAAQS) in order to protect public health. (5-1-94)~~

(BREAK IN CONTINUITY)

~~614. PRESCRIBED BURNING.~~

~~The use of open outdoor fires to obtain the objectives of prescribed fire management burning is an allowable form of open burning when the provisions of Section 614 are met. (5-1-94)~~

~~01. Burning Permits or Prescribed Fire Plans. (5-1-94)~~

~~a. Whenever a burning permit or prescribed fire plan is required by the Department of Lands, U.S.D.A. Forest Service, or any other state or federal agency responsible for land management, any person who conducts or allows prescribed burning shall meet all permit and/or plan conditions and terms which control smoke. (5-1-94)~~

Commented [RM4]: Term should be "reduce". Minimize is to reduce something to the smallest amount or degree which denotes a measurable quantity. "Reduce" is to simply decrease something from it's current state.

~~b. The Department will seek interagency agreements to assure permits or plans issued by agencies referred to in Subsection 614.01.a. provide adequate consideration for controlling smoke from prescribed burning. (5-1-94)~~

~~02. **Smoke Management Plans for Prescribed Burning.** (5-1-94)~~

~~a. Whenever a permit or plan is not required by the Department of Lands, U.S.D.A. Forest Service, or any other state or federal agency responsible for land management, any person who conducts or allows prescribed burning shall meet all conditions set forth in a Smoke Management Plan for Prescribed Burning. (5-1-94)~~

~~b. The Department will develop and put into effect a Smoke Management Plan for Prescribed Burning consistent with the purpose of Sections 600 through 616. (5-1-94)~~

~~03. **Rights-of-Way Fires.** The open burning of woody debris generated during the clearing of rights of way shall be open burned according to Sections 38-101 and 38-401, Idaho Code, IDAPA-20 Title 16 and Sections 606 through 616 of these rules. (5-1-94)~~

(BREAK IN CONTINUITY)

Sections 627 through 636 were redrafted, reorganized, and inserted to replace those sections from the Preliminary Draft Rule (Draft No. 1). Due to the extensive revisions, these sections were inserted as clean text with no formatting or highlighting.

627. PRESCRIBED BURNING.

Sections 627 through 636 establish the requirements for prescribed burning.

628. PRESCRIBED BURNER TYPES.

01. Major Burner. Any person, as defined in 006, conducting any prescribed burning that, on a statewide basis, burns two thousand two hundred fifty (2,250) tons or more of material per year.

02. Minor Burner. Any person, as defined in 006, conducting any prescribed burning that, on a statewide basis, burns less than two thousand two hundred fifty (2,250) tons of material per year.

a. Broadcast Burning. Any minor burner conducting broadcast burning as defined in 006.

b. Large Volume Pile Burning. Any minor burner conducting pile burning, as defined in 006, that has a daily total volume of one thousand two hundred cubic feet (1,200 ft³) or more.

c. Small Volume Pile Burning. Any minor burner conducting pile burning, as defined in 006, that has a daily total volume less than one thousand two hundred cubic feet (1,200 ft³).

629. RECOGNIZED SMOKE MANAGEMENT GROUPS.

01. Recognition. To become a recognized smoke management group, the group must annually demonstrate to the Department how their policies and procedures meet or exceed the requirements identified in Subsections 629.04, 630.02, 631, 632.02, 633.02, 634, and 636.

02. Notification. The Department will notify the group and post on the Department's website a list of qualifying recognized smoke management groups, the rule section(s) satisfied by the group's policies and procedures, and any limitations.

03. Membership. Burners may choose to join a recognized smoke management group to fulfill rule requirements.

Commented [RM5]: This volume equates to the approximate volume of 4 piles 3ftx8ft x 12ft or ~4 dump truck loads. This will cause most if not all commercial forest operations to be subject to this rule. This will require all pile burns that exceed this amount to be subject to 630.03 & 632.03. This will create a serious "rush" on any permitting system from October 21st to approx. November 15th. The three primary weekends where Private Landowner prescribed burning typically occurs.

A burner is considered a member in good standing with a recognized smoke management group if the burner complies with the applicable policies and procedures of the group.

04. Collaboration. Through a collaborative process, the recognized smoke management group and the Department shall agree on final burn decisions.

630. REGISTRATION.

All burners shall adhere to the following applicable registration requirements.

01. Major Burners, Member of a Recognized Smoke Management Group. Register planned burns with, and be a member in good standing of, a recognized smoke management group, as defined in Section 006, or comply with 630.02.

Commented [RM6]: "management by committee" for time and condition sensitive activities are designed to fail. The rule sets normal status will be not to burn unless granted permission instead of the onus being on the regulatory body to stipulate not to burn.

02. Major Burners, Not a Member of a Recognized Smoke Management Group.

Register planned burns as follows:

- a. No later than thirty (30) calendar days before the first proposed ignition on the forms provided by the Department, submit information on the burn type, location, acreage, and fuel characteristics for all burns planned for the calendar year to the Department. Additional information necessary for the Department to make a burn decision under Sections 627 through 636 shall be submitted upon request.
- b. Details of individual registered planned burns may be amended until five (5) business days before the proposed ignition (e.g., fuel characteristics and burn type).
- c. New planned burns may be added to a burner's registration until thirty (30) calendar days before the proposed ignition.

03. Minor Burners: Broadcast and Large Volume Pile Burning. At least thirty (30) calendar days before each proposed ignition, using the forms provided by the Department, submit information on the burn type, location, pile size, number of piles or acreage, and fuel characteristics. Additional information necessary for the Department to make a burn decision under Sections 627 through 636 shall be submitted upon request.

631. ANNUAL COORDINATION, MAJOR BURNERS.

All major burners shall coordinate annually with the Department. This coordination is in addition to registering and requesting to burn.

632. REQUEST TO BURN.

All burners shall adhere to the following applicable request to burn requirements.

01. Major Burners, Member of a Recognized Smoke Management Group. Submit a request to burn to, and be a member in good standing of, a recognized smoke management group, as defined in Section 006, or comply with 632.02.

02. Major Burners, Not a Member of a Recognized Smoke Management Group.

- a. Submit a request to burn to the Department by noon Mountain time at least one (1) business day before

Commented [RM7]: This is untenable. Weather, "No burn" periods, operational constraints, etc. do not accommodate finite operational parameters.

Commented [RM8]: This subjects all small operations to burn by permission only. Small Forestry operations subject to Slash Compliance option #2 have a contractual obligation to mitigate the fuel hazard created. Small operators do not have the scheduling options and time availability to accomplish burns like large contractor or fire agencies.

Burden should fall on DEQ to provide notification of Non-burn days. This would allow Minor Burners to ignite when conditions are conducive for burning without be constrained by permission response.

proposed ignition.

b. Provide burn manager's name and training information as required by Subsection 636.04, planned burn unique identifier, and location. Additional information necessary for the Department to make a burn decision under Sections 627 through 636 shall be submitted upon request.

03. Minor Burners, Broadcast and Large Volume Pile Burning.

a. Submit request to burn to the Department by noon Mountain time at least one(1) business day before proposed ignition.

Commented [RM9]: Again, this subjects all small operations to burn by permission only. This paragraph limits or restricts the IDL mandated slash mitigation requirement by reducing or in some cases prohibiting compliance with a contractual obligation. Again, burden should fall on DEQ to provide notification of Non-burn days. This would allow Minor Burners to ignite when conditions are conducive for burning without be constrained by permission response.

Commented [RM10]: Most Prescribed fire activities occur in the Pacific Time Zone. This should be the Operational Time used for notification.

b. Provide burn manager's name and training information as required by Subsection 636.04, planned burn unique identifier, and location. Additional information necessary for the Department to make a burn decision under Sections 627 through 636 shall be submitted upon request.

633. BURN DECISION

01. Burn Decision Criteria. The Department will evaluate the following before issuing a burn decision:

- a. The forecasted meteorological and ambient air quality conditions to ensure the proposed burns will not cause or contribute to an exceedance of any National Ambient Air Quality Standard (NAAQS);
- b. The proximity and potential impact of the proposed burns to communities and institutions with sensitive populations;
- c. The proximity and potential impact of the proposed burns to Mandatory Class 1 Areas;

and

d. Additional smoke management factors necessary for the Department to make a burn decision under Sections 627 through 636.

02. Notification of Burn Decision. The Department will post the burn decision and any specific conditions under which burning is approved on its website. Burn managers, as defined in Section 006, who are burning for members in good standing of a recognized smoke management group, as defined in Section 006, will be notified of the burn decision by their recognized smoke management group.

634. SMOKE MANAGEMENT PRACTICES. For each approved burn, except minor burners conducting small volume pile burning, the burn manager, as defined in 006, shall implement the following.

- 01. Smoke Dispersion Forecast.** Obtain and review a smoke dispersion forecast specific to the burn location and ignition time. Evaluate whether smoke dispersion conditions still support conducting the burn.
- 02. Test Burn.** Conduct a test burn and confirm adequate vertical and horizontal smoke dispersion.
- 03. Recordkeeping.**

Commented [RM11]: Training: What are the requirements, availability, time commitment, costs? Additional information necessary to make a decision?

Commented [RM12]: IF DEQ is already making the decision for Burn activity why subject small operators to these requirements? Burden should fall on DEQ to provide notification of Non-burn days through multiple notification portals..

Commented [RM13]: Vagaries are unacceptable. Specific requirements are needed when restricting contractual actions or subjecting one to administrative regulation.

Commented [RM14]: Multiple notification portals need to be used. Remote locations do not have internet access. SMS and recorded messages could be utilized.

Commented [RM15]: Again, this will impact most likely 90% of all Small Forestry operators and Prescribed fire operations as 1200 cuft is not a reasonable delineation point.

- a. Record on-site weather conditions.
- b. Record smoke conditions observed during and after the burn and smoke impacts on any populated area as a result of the burn.
- c. Retain records of smoke dispersion forecast, on-site weather conditions present during ignition, and smoke condition observations for two (2) years and provide to the Department upon request.

Commented [RM16]: What weather conditions need to be recorded? Equipment necessary? Cost for operator?

Commented [RM17]: Actions or penalties for failure to provide?

635. UNPLANNED FIRE EVENT

To identify and coordinate management action strategies based on the level of smoke impacts on public health and welfare, all federal, state, or local governmental entities managing a wildfire of more than fifty (50) acres shall notify the Department within forty-eight (48) hours of the decision to manage any portion of a wildfire under a strategy other than full suppression.

636. GENERAL PROVISIONS.

01. Designated Burn Day Prescribed burning shall only be conducted when the Department designates that day as a burn day, and the burn is conducted in accordance with any specific conditions under which burning is approved.

02. Communication with Major Burners and Minor Burners, Broadcast and Large Volume Pile Burning. For the purpose of receiving information directly from the Department, the burner shall submit, and implement, a communication plan to the Department.

Commented [RM18]: Burden should fall on the DEQ to develop a communication plan to implement this rule set.

03. Limitations on Burning.

a. When required by the conditions of the burn decision, the burn manager shall cease new ignitions such that the fire burns down if smoke is adversely impacting institutions with sensitive populations.

Commented [RM19]: Define. What denotes adversely impacting? How will this information be provided? Timeliness? Post ignition constraints and those impacts upon the burn manager?

b. When contacted by the Department, the burn manager shall cease new ignitions such that the fire burns down if required to do so.

04. Smoke Management Training. All burn managers, as defined in Section 006, must complete Department-approved prescribed burning smoke management training and complete refresher training at least every five (5) years.

Commented [RM20]: Training: What are the requirements, availability, time commitment, costs?

05. Advisory Committee. The Department will assemble an advisory committee consisting of representatives from groups such as the general public, environmental organizations, forest and rangeland organizations, health organizations, Idaho Department of Lands, federal land management agencies, Idaho Department of Environmental Quality, recognized smoke management groups, and others that meets annually to discuss prescribed burning smoke management issues.

Commented [RM21]: Timber protective organizations. Small Forestry operators, Pvt timber landowners, How many members? Selection process? Where Prescribed burning is a tool used throughout all ownership regimes, this group needs to be diverse and provide equal representation for all ownership types and bodies.

Commented [RM22R21]: