

**Idaho Solid Waste Association Legislative Awareness Committee**

**Idaho Negotiated Rulemaking Docket No. 58-0101-1701 - Regulatory and Implementation Considerations  
Relating to New MSW Landfill New Source Performance Standards and Emission Guidelines**

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Presented May 2017*

The intent of this paper is to provide Idaho Solid Waste Association members with a balanced summary of the proposed rulemaking related new USEPA NSPS and EG Rules being considered for adoption by the Idaho Department of Environmental Quality.

**IDEQ Summary**

“This rulemaking has been initiated to provide DEQ with the authority to develop a Clean Air Act Section 111(d) state plan to implement the recently updated Emission Guidelines and Compliance Times for Municipal Solid Waste (MSW) Landfills (81 Fed. Reg. 59276, August 29, 2016). Idaho currently implements federal regulations for MSW landfills at IDAPA 58.01.01., Sections 859-860. EPA recently updated the federal regulations governing these facilities. In order for DEQ to continue to implement the program, DEQ must update its existing rules and develop a state plan for Idaho. If DEQ fails to update its rules and develop a state plan, EPA will promulgate a federal plan for Idaho. In this proposed rulemaking, Idaho plans to update and streamline IDAPA 58.01.01., Sections 859-860, which were promulgated in 2000 to provide DEQ the authority to implement the state plan at that time.”

“The text of the rule will be drafted by DEQ in conjunction with a negotiating committee made up of persons having an interest in the development of this rule. Members of the regulated community who may be subject to Idaho’s air quality rules, municipalities, special interest groups, public officials, and members of the public who have an interest in the regulation of air emissions from landfills in Idaho may be interested in participating in this rulemaking.”

“Upon conclusion of negotiations, DEQ intends to publish a proposed rule for public comment in the summer of 2017 and then present the final proposal to the Idaho Board of Environmental Quality (Board) in the fall of 2017 for adoption of a temporary/pending rule. If adopted by the Board, the rule will be reviewed by the 2018 Idaho Legislature.”

**Pro Rule Change Position – IDEQ Presentations:**

IDEQ wants to implement rule to retain primacy for Air Permitting in Idaho. It is IDEQ’s belief that by being proactive, that they can retain some flexibility on how the regulations are implemented in Idaho.

IDEQ is aware that deadline is May 30, 2017 and that they won’t meet that deadline and have requested an extension from EPA.

XXX is being implemented through another process wherein the rule is adopted in total without negotiated rule making. Cf is different because IDEQ must develop a state plan and this rulemaking provides the mechanism for IDEQ to start developing a state plan.

Initially IDEQ requested a temporary rule so that they could start on the plan before the rule is approved by the Idaho Legislature. However, since IDEQ has established a target deadline for December of 2018, they are not going to pursue the temporary rule status.

This rule affects landfills that were constructed or modified after July 2014. It is anticipated that in addition to the existing large landfills (i.e. Ada County, SISW, Canyon, Kootenai, & Bannock County), this rule may likely affect existing medium sized landfills (i.e. Peterson Hill, Bennet Road, Simco Road, Clay Peak, Riverdale, Shooting Range, Hub Butte, & Circular Butte).

An additional public meeting has been scheduled for May 22, 2017 for IDEQ to present comments received on the proposed rule and to present and review any changes to the rule resulting from those comments.

The following link were provided to access IDEQ's presentation at the Public Meeting:

<http://www.deq.idaho.gov/media/60179992/58-0101-1701-requirements-for-msw-landfills-presentation-0517.pdf>

<http://www.deq.idaho.gov/media/60179990/58-0101-1701-emission-guidelines-idaho-msw-landfills-presentation-0517.pdf>

### **Con Rule Change Position:**

#### *Initiated Rule Making Timing:*

In August 2016 USEPA adopted new Part 60 standards for MSW landfills instead of revising the original 1996 standards. Although states have been charged with developing state plans for implementing the new rules by May 30, 2017 there are flaws with the way they are written and states could elect not to implement the rules at this time. USEPA will promulgate a federal plan for states without a plan. Since USEPA has not developed a federal plan, all conflicts will likely be resolved prior to the adoption of a federal plan. There is no state penalty for *not* adopting these Rules by May 30, 2017. States may adopt a state plan in the future, even after becoming subject to a federal plan. There is no risk to the state and it is not prudent for states to spend resources of developing and enforcing a plan based on flawed rules. It is also burdensome and expensive for states to revisit an adopted plan later when the USEPA resolves outstanding rule conflicts.

#### *Technical Rule Conflicts:*

The New Source Performance Standards (NSPS) (40 CFR Part 60, Subpart WWW) currently require landfills to test and submit a Tier 2 Report containing site-specific NMOC (non-methane organic compound) concentrations every 5 years. Tier 2 tests are performed to determine the current site-specific concentration of NMOCs to better calculate the landfill's NMOC emission rate. Using the site-specific NMOC concentration from the Tier 2 testing, the NMOC emission rate for the specific facility is determined in accordance with 40 CFR 60.754.

In previous years, the NMOC emission threshold was 50 mega grams per year (Mg/year). The new EPA standards (enacted as part of the Clean Air Act) reduced the NMOC reporting threshold to 34 Mg/year. This means if landfill conduct regular Tier 2 samplings every 5 years and any one of the data points is at or above 34 MG/year, the landfill moves to Tier 3 status and is required to install a landfill gas collection and control system GCCS. The landfill will have 1 year to submit a GCCS design plan prepared by a professional engineer and 30 additional months to install and operate a landfill GCCS.

The Municipal Solid Waste Landfill New Source Performance Standards (NSPS) and Emissions Guidelines (EG) have several flaws that should be addressed before IDEQ develops a State Plan. These flaws have been acknowledged by the federal government. As mentioned, the New Rules are in limbo federally, and a plan has not been developed yet by USEPA. To ensure only clear, non-conflicting Rules are adopted and enforced, the following actions have occurred: (1) Administrative petitions have been filed with USEPA to correct deficiencies with the new rules; and (2) Judicial challenges have been filed with the United States Court of Appeals for both 40 CFR Part 60 Subpart Cf and 40 CFR Part 60 Subpart XXX.

*Rule Making Considerations:*

If IDEQ chooses to move forward with implement the New Rules in accordance with the published schedule, the following issues should be deliberated:

- The way the new rules are currently written, landfills will be subject to the old and new rules in the future. Specifically, 40 CFR Part 63.1955 NESHAP for Landfills states that to be in compliance:  
**(a)** You must fulfill one of the requirements in paragraph (a)(1) or (2) of this section, whichever is applicable:  
**(1)** Comply with the requirements of 40 CFR part 60, Subpart WWW.  
**(2)** Comply with the requirements of the Federal plan or EPA approved and effective State plan or tribal plan that implements 40 CFR part 60, subpart Cc.

EPA originally intended to revise the old rules (WWW and Cc), but instead adopted new rules (XXX and Cf). The NESHAP requirements were not revised in the process, therefore, landfills subject to Subpart Cf will also be subject to either Subpart Cc (pre-1991) or Subpart WWW (1991-2014) until this issue is cleared up. Also, landfills subject to Subpart XXX will be subject to Subpart WWW as well.

To avoid this problem, there should be language in the States New Rule stating that compliance with 40 CFR Part 60, Subpart Cf would constitute compliance with Subpart WWW and Subpart Cc.

- IDEQ has stated Idaho Rules will not to be more stringent than USEPA Rules. By incorporating the proposed New Rules by reference rather than delineating specific changes, IDEQ will need to regularly revisit and change State Rules to ensure they stay consistent with changes to federal rules (Subparts Cf and XXX) in the future. This is a more burdensome and expensive New Rule implementation route for the State. There is also a possibility the New Rules may be repealed. If that is the case, Idaho should incorporate language in their negotiated New Rules that identifies in the event the New Rules are repealed or deemed unenforceable by the USEPA, Idaho State Rules would be repealed or deemed unenforceable.
- Idaho may also want to include text that confirms the New Rule do not take effect until approval by USEPA to avoid conflict with the timelines outlined in Subpart Cf.
- Finally, it appears that IDEQ will need to ensure that they recognize and address the disparity in milestones identified in subpart Cf (40 CFR 60.32f) [i.e. 30 months after an NMOC rate report shows exceedance of 34 megagrams] and those identified in 40 CFR 60.38f(c) that requires the NMOC reports to be submitted within 90 days after USEPA approval of the state's plan.

Comments Due May 12, 2017 to:  
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Next Rule Making Meeting:  
June 22, 2017  
DEQ State Office  
Conference Center  
1410 N. Hilton, Boise, Idaho