

## IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

### 58.01.24 – STANDARDS AND PROCEDURES FOR APPLICATION OF RISK BASED CORRECTIVE ACTION AT PETROLEUM RELEASE SITES

DOCKET NO. 58-0124-1801

#### NOTICE OF NEGOTIATED RULEMAKING

**AUTHORITY:** In compliance with Section 67-5220, Idaho Code, and IDAPA 58.01.23, Rules of Administrative Procedure Before the Board of Environmental Quality, Sections 810 through 815, notice is hereby given that this agency intends to promulgate a rule and desires public participation before publishing a proposed rule. This rulemaking action is authorized by Chapters 1, 36, 44, 72 and 74, Title 39, Idaho Code.

**METHOD OF PARTICIPATION:** Those interested in participating in the negotiated rulemaking process are encouraged to attend the meetings at one of the following locations. The public may participate by telephone and web conferencing at any of the meeting locations or with individual connections. Individuals interested in participating by telephone and web conferencing should contact the undersigned by the date provided in the table below. For those who cannot participate by attending the meetings, information for submitting written comments is provided at the end of this notice.

**MEETING SCHEDULE:** The negotiated rulemaking meetings will be held as follows. Additional meetings will be scheduled if necessary.

<b>*ORIGINATING LOCATION – LIVE MEETING*</b>	
<b>DEQ State Office Conference Center 1410 N. Hilton, Boise, Idaho</b>	
<b>Friday, June 29, 2018 - 9:00 a.m. to 12:30 p.m. (MDT) And Thursday, July 19, 2018- 9:00 a.m. to 12:30 p.m. (MDT)</b>	
<b>*TELEPHONE AND WEB CONFERENCE LOCATIONS*</b>	
<b>DEQ Coeur d’Alene Regional Office 2110 Ironwood Parkway Coeur d’Alene, ID 83814</b>	<b>DEQ Lewiston Regional Office 1118 F Street Lewiston, ID 83501</b>
<b>DEQ Twin Falls Regional Office 650 Addison Avenue West, Suite 110 Twin Falls, ID 83301</b>	<b>DEQ Pocatello Regional Office 444 Hospital Way #300 Pocatello, ID 83201</b>
<b>DEQ Idaho Falls Regional Office 900 N. Skyline, Suite B Idaho Falls, ID 83402</b>	
<b>TELEPHONE AND WEB CONFERENCE INFORMATION</b>	
<b>For the <i>June 29, 2018</i> meeting, contact the undersigned by <i>June 22, 2018</i>, to make arrangements for participation by telephone and web conferencing.</b>	
<b>For the <i>July 19, 2018</i> meeting, contact the undersigned by <i>July 12, 2018</i>, to make arrangements for participation by telephone and web conferencing.</b>	

The meeting locations will be accessible to persons with disabilities, and language translators will be made available upon request. Requests for these accommodations must be made no later than five (5) days prior to the meeting date. For arrangements, contact the undersigned.

**PRELIMINARY DRAFT RULE:** DEQ did not draft a preliminary draft rule for public review prior to the first meeting. The first meeting has been scheduled for guidance development and setting a path forward. More information regarding this rule docket is available at [www.deq.idaho.gov/58-0124-1801](http://www.deq.idaho.gov/58-0124-1801).

**DESCRIPTIVE SUMMARY:** DEQ initiated this rulemaking to update the “Standards and Procedures for Application of Risk Based Corrective Action at Petroleum Release Sites,” IDAPA 58.01.24, and the associated guidance manual, “Idaho Risk Evaluation Manual for Petroleum Releases,” to reflect the updated toxicity criteria as established by EPA. The rule was first adopted by the Idaho Board of Environmental Quality (Board) in 2008 and approved by the Idaho Legislature in 2009. In 2012, the rule was amended to update toxicity criteria and guidance was developed. Since the 2012 adoption of the rule and guidance, many of the petroleum chemicals of concern listed in the tables in the rule have had updated toxicity information which has resulted in the screening levels found in the tables to be out of date with current toxicity criteria.

This rulemaking will update portions of the rule that are pertinent to evaluation of petroleum release sites in order to promote consistent corrective action decision-making at these sites. The rule will include the following proposed revisions:

1. Remove Table 2, screening level values, to avoid the rule becoming out of date (an updated Table 2 would be transferred to the guidance manual);
2. Remove Table 3, toxicity values, to avoid the rule becoming out of date (an updated Table 3 would be transferred to the guidance manual);
3. Revise the guidance manual to update the screening level values and toxicity values;
4. Revise the guidance manual to update the current industry practice for evaluation of the vapor intrusion pathway.

The associated guidance manual will be revised in conjunction with this rulemaking. The text of the rule will be developed by DEQ in conjunction with a negotiating committee made up of persons having an interest in this rule. Cities, counties, bankers, lenders, realtors, petroleum marketers, consultants, and citizens of the state of Idaho may be interested in participating in this rulemaking.

Upon conclusion of negotiations, DEQ intends to present the rule to the Board in November 2018 for adoption of a temporary rule with an effective date of January 2, 2019. If the Board adopts the temporary rule, DEQ will publish the temporary rule and initiate proposed rulemaking in the January 2019 Idaho Administrative Bulletin.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption is appropriate in that the rulemaking confers a benefit. The revisions to the rule and associated guidance will confer a benefit to the regulated community by providing the most current toxicity criteria in both the rule and guidance. Adoption of a temporary rule would ensure that the effective date of the rule lines up with the date the revised guidance manual becomes final.

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning this rulemaking, contact Eric Traynor at [eric.traynor@deq.idaho.gov](mailto:eric.traynor@deq.idaho.gov), (208) 373-0565.

Written comments may be submitted by mail, fax or email at the address below. Information regarding public comment opportunities provided throughout the negotiated rulemaking process will be available at [www.deq.idaho.gov/58-0124-1801](http://www.deq.idaho.gov/58-0124-1801) or by contacting the undersigned.

Dated this 6th day of June, 2018.

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