



DEQ POLICY STATEMENT PS20-02

POLICY REGARDING OWNERS OF PROPERTY CONTAINING CONTAMINATION FROM OFF-SITE SOURCES

PURPOSE

This policy shall supersede and replace the “Policy Regarding Owners of Property Containing Contamination from Off-Site Sources” (PM15-02), dated March 31, 2015.

The purpose of this policy is to define conditions when it is appropriate for the Idaho Department of Environmental Quality (DEQ) to not pursue enforcement action against the owner of property contaminated solely as a result of migration from a contaminant source or sources outside the property (i.e., from off-site sources). The owner of such property is referred to in this policy as the impacted landowner. Examples of migration from off-site sources include, but are not limited to, contaminated ground water transport under an adjacent, downgradient property; vapor migration from contaminated soils or ground water into structures on off-site properties; contaminated surface water runoff; or deposition of contaminated soils via windblown dust or other mechanisms.

The US Environmental Protection Agency (EPA) has developed similar policies applied under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). For more information, see EPA’s web pages: “Common Elements and Other Landowner Liability Guidance” (<https://www.epa.gov/enforcement/common-elements-and-other-landowner-liability-guidance>), “Interim Guidance: Enforcement Discretion Regarding Contiguous Property Owner” (www2.epa.gov/enforcement/interim-guidance-enforcement-discretion-regarding-contiguous-property-owners), and “Guidance: Owners of Property Containing Contaminated Aquifers” (www2.epa.gov/enforcement/guidance-owners-property-containing-contaminated-aquifers).

This policy is not enforceable but rather sets forth DEQ’s interpretation of its rules, or otherwise provides assistance to the public and DEQ in implementing applicable rules and programs.

STATEMENT OF POLICY

It is DEQ’s policy not to pursue enforcement under State of Idaho statutes and rules administered by DEQ against those impacted landowners who, through no fault of their own, come to have contamination on their property that has migrated from outside their property if all of the following conditions are met:

1. The impacted landowner is not affiliated with any person (as defined in in Idaho Code §39-103) that may be responsible for the off-site source of contamination and did not cause, consent to, or contribute to the release or threat of release of the off-site source of

contamination and is not affiliated with the property or landowner from which the off-site contamination originated.

2. The impacted landowner did not cause, consent to, or contribute to the release or threat of release of the off-site contaminant through an act or omission. The failure to take affirmative steps to mitigate or address the contamination, such as conducting investigations or installing and operating remediation systems, will not, in the absence of exceptional circumstances, constitute an "omission" within the meaning of this policy.
3. The impacted landowner takes reasonable steps to prevent or limit the migration or transport of these contaminants. In evaluating this condition, DEQ will consider the nature of the off-site source of contaminants. This policy may not apply where the impacted property contains a ground water well, the existence or operation of which may exacerbate the migration or transport of contamination. Under this policy, the well owner may be required to cease operation of the well and allow DEQ access to the well for monitoring purposes. These situations will require case-by-case analysis.
4. The impacted landowner agrees to cooperate reasonably with state and federal agencies and any responsible party in their efforts to investigate and remediate the contamination, including providing access to the property and complying with information requests. Access to the property and activities to be conducted while accessing the property should be through a signed access agreement between the property owner and DEQ (EDMS 2020BAH6).
5. The impacted landowner is in compliance with any activity and use limitations or other restrictions implemented through an environmental covenant relating to remediation of the contamination and does not impede the effectiveness or integrity of institutional controls implemented on the property.
6. There is no alternative basis for the impacted landowner's liability for the contamination under laws administered by state or federal agencies.

This policy does not limit DEQ's authority to obtain access to a property for any lawful purpose including, but not limited to, inspection, monitoring, or necessary action to mitigate an off-site release of contamination.

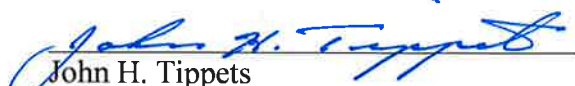
RESPONSIBILITY

The Assessment and Compliance Bureau Chief is responsible for maintaining this policy.

IMPLEMENTATION

This policy is effective immediately and will remain in effect for 5 years unless amended, replaced, or rescinded prior to expiration.

Dated this 1st day of June, 2020


John H. Tippetts
Director