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March 29, 2024

VIA EMAIL ONLY

kristi.lowder@deq.idaho.gov

Kristi Lowder
Department of Environmental Quality
1410 North Hilton
Boise, Idaho 83706

Re: Petroleum Release Corrective Action Comments – Docket No. 58-0124-2401

Dear Ms. Lowder:

This firm represents the Idaho Petroleum Clean Water Trust Fund, also known as the Petroleum Storage Tank Fund (“PSTF” or the “Fund”). On behalf of the Fund, thank you for the opportunity to provide a public comment during the Idaho Department of Environmental Quality’s (“DEQ”) negotiated rulemaking for the Standards and Procedures for Application of Risk Based Corrective Action at Petroleum Release Sites (IDAPA 58.01.24).

As stated in PSTF’s previous public comment, dated August 30, 2023, the Fund supports DEQ’s proposed rulemaking to retire the current risk evaluation software and replace it with the United States Environmental Protection Agency’s (“EPA”) Regional Screening Level (“RSL”) and Vapor Intrusion Screening Level (“VISL”) Calculators.

However, the Fund has concerns with a number of other proposed changes included in DEQ’s negotiated rulemaking docket, which shall be addressed in turn below.

At present, IDAPA 58.01.24 is specific to petroleum releases. In the negotiated rulemaking docket, DEQ proposes to move the hazardous materials rules from the Water Quality Standards Rule, currently at IDAPA 58.01.02, to IDAPA 58.01.24. Such hazardous materials rules have historically been separate and for good reason. Petroleum releases are not managed as hazardous materials. Rather, the protection of state waterways from unauthorized releases of hazardous materials is a distinct issue addressing the quality of state waters, impacting different

industries, and is governed by a separate section of Idaho Code. As such, it is inappropriate for the regulated petroleum industry (petroleum marketers) to be subject to rules that do not apply to it.

Additionally, the focus of the proposed rule dedicates only a small percentage of its verbiage to non-petroleum releases, while the majority of the text is dedicated to petroleum releases. Such a disparity could improperly imply that petroleum releases require a greater response and are of a greater threat than hazardous materials.

Further, at the March 11, 2024 negotiated rulemaking meeting, DEQ stated that Governor Little's Zero Based Regulation was the sole reason for the inclusion of such Water Quality Standards. However, the Fund is unconvinced that the mandate to reduce the overall wordcount of DEQ's rules is a valid basis for consolidating these rules, potentially causing regulatory confusion amongst the varying industry stakeholders who would be impacted by this change. Not only is it confusing for rules that do not apply to the petroleum industry to be included in this docket, their absence from their substantive, partnering provisions is likewise confusing. As such, PSTF requests the removal of the hazardous materials rules from IDAPA 58.01.24.

The proposed rule is inconsistent on the search radius for wells. At Section 061.05.d.v., the rule specifies that an investigation for soil and water cleanup should include a search of a ¼-mile radius. Whereas, at Section 300.02.f.ii., the rule specifies a ½-mile radius for a site-specific risk evaluation. PSTF requests that the rule's current use of a ¼-mile radius for all well searches be maintained to avoid contradictory provisions.

Historically, the use of the term "schedule and criteria" has been used by DEQ to describe the action taken after a party refuses to enter into a consent order. In the proposed rule, at Section 061.06.c.ii, "schedule and criteria" is used with reference to the implementation of corrective action plans, which are included in consent orders. Thereafter, in Section 061.07.c, such term is used as a DEQ-issued requirement after non-compliance. To avoid confusion and to maintain industry standards, PSTF requests that DEQ find a different term for use in describing procedures for compliant consent orders.

Section 300.01.e of the proposed rule presents reference sources of reasonable maximum exposure factor information. The proposed rule should specify that the EPA's RSL table should be used as the sole source for this information.

One of the greatest concerns that PSTF has with the rulemaking docket as proposed is the reduction in the PSTF Board of Trustees' (the "PSTF Board") role if changes are made to the Guidance Manual at Section 700. The current rule requires DEQ to invite PSTF's Board, through public notice, to participate in the development of the manual. The proposed rule strikes this requirement and leaves only the requirement for DEQ to invite the PSTF Board to participate via public notice *if* DEQ identifies substantive revisions. The consolidation of words creeps in the direction of removing the Board's seat at the table during discussions. As a public entity managing public funds and governed by a state-appointed board of trustees, as authorized under the Idaho Petroleum Clean Water Trust Fund Act (§ 41-4901 *et seq.*, Idaho Code), PSTF should

be a party with equal footing to all revisions to the guidance manual. As such, PSTF recommends that the current language remain in the rule.

Finally, Section 800 of the proposed rule includes a table showing the *Chemicals of Interest for Various Petroleum Products*. PSTF believes that the table should be expanded to show that for diesel fuel, fuel oils, and jet fuel, the Chemicals of Interest for vapor intrusion is a reduced set of the listed chemicals of interest. A proposed revision of the table is attached herein at **Exhibit A**.

Please contact myself and Michael Backe with Olympus Technical Services, Inc. via email at ccunnington@givenspursley.com and mbacke@olytech.com, respectively, if you have questions or would like to discuss these comments.

Sincerely,



Charlotte V. Cunnington

CVC/ LH
Enclosures

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EXHIBIT A

Proposed Table for Chemicals of Interest for Various Petroleum Products

CHEMICALS OF INTEREST FOR VARIOUS PETROLEUM PRODUCTS							
Chemical	Gasoline/ JP-4/ AVGas	Diesel/ Fuel Oil No. 2/ Kerosene (soil- groundwater)	Diesel/ Fuel Oil No. 2/ Kerosene (vapor intrusion)	Fuel Oil No.4 (soil- groundwater)	Fuel Oil No.4 (vapor intrusion)	Jet Fuels (Jet A, JP-5, JP-8) (soil- groundwater)	Jet Fuels (Jet A, JP- 5, JP-8) (vapor intrusion)
Benzene	X	X	X		X	X	X
Toluene	X	X	X		X	X	X
Ethyl benzene	X	X	X		X	X	X
Xylenes (mixed)	X	X	X		X	X	X
Ethylene Dibromide (EDB)	X ¹						
1,2 Dichloroethane (EDC)	X ¹						
Methyl Tert-Butyl Ether (MTBE)	X						
Acenaphthene		X		X		X	
Anthracene		X		X		X	
Benzo(a)pyrene		X		X		X	
Benzo(b)fluoranthene		X		X		X	
Benzo(k)fluoranthene		X		X		X	
Benz(a)anthracene		X		X		X	
Chrysene		X		X		X	
Fluorene		X		X		X	
Fluoranthene		X		X		X	
Naphthalene	X	X	X	X	X	X	X
Pyrene		X		X		X	
X¹ Leaded Regular Only							