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May 16, 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:

On behalf of the Idaho Petroleum Clean Water Trust Fund, also known as the Petroleum Storage Tank Fund (the “Fund”), thank you for the Idaho Department of Environmental Quality’s (“DEQ”) collaboration throughout the rulemaking process. As a result of the rulemaking hearings and through the opportunity to provide public comments, the Fund believes that, overall, it has reached a reasonable compromise with DEQ in regard to the Rules for Petroleum Release Correction Action (the “Rule”).

In summary, the Fund requested the following items that have been substantively amended by DEQ and are reflected in the current draft version 3 of the Rule:

1. The removal of the Hazardous Material rules taken from the Water Quality Standards;
2. Consistency of the well search radius at Sections 061.05.d.v and 300.02.f.ii;
3. Clarification and consistent use of the enforcement mechanism term “schedule and criteria”;
4. Acknowledgment in Section 200 that DEQ will adopt and use the United States Environmental Protection Agency’s Regional Screening Level (“RSL”) and Vapor Intrusion Screening Level (“VISL”) calculators for use in risk evaluations; and
5. The removal of references to vapor intrusion specific to fuel oil in the Chemicals of Interest (“CoI”) table at Section 800, with the exception of the continued inclusion of benzo(a)anthracene.

As discussed during the third rulemaking hearing on May 9, commercial laboratory detection limits (VISL-calculated screening level) for vapor intrusion are not achievable for benzo(a)anthracene with current sampling and analytical methodologies. While we accept DEQ’s position that Section 500 of the Rule permits the use of Practical Quantitation Limits as a

remediation standard, we restate our position that, using present-day sampling/analyses, benzo(a)anthracene analysis is impractical and should be excluded from vapor intrusion risk evaluations. The rule should identify such an exclusion.

Finally, in addition to the foregoing enumerated items, the Fund requested that its Board of Trustees be provided the opportunity to meaningfully be included and participate when DEQ makes changes to the guidance manual referenced at Section 700 in the Rule. Due to the highly technical nature of petroleum release corrective action and the impact that these rules and subsequent guidance will have on claims paid for by the taxpayer through the Fund, the Fund requested that the Rule reflect the Fund's Board of Trustees as an active participant in negotiations on interpretations of the Rule in the guidance manual. DEQ was amenable to our suggestions for amendment. As such, we request the following further edits to Section 700 of version 3 of the draft Rule:

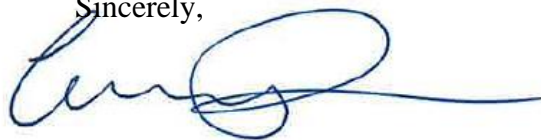
700. GUIDANCE MANUAL.

If any material revisions to the risk evaluation manual for petroleum releases are required, the Department will, through public notice, invite the Board of Trustees established in Section 41-4904, Idaho Code, and members of the public, including the regulated community, to ~~participate in making~~ collaboratively make such revisions. Material revisions are those changes that result in, or could result in, a different interpretation or use of any provision of the rule, and subsequently, the guidance manual. If any revisions are made to the guidance manual, the Department will publish the draft guidance manual for public comment.

As noted in our prior public comments, the Fund shares DEQ's policy goal of regulatory predictability. The Fund believes that, with the changes made, the Rule is more consistent and clear, furthering the collective policy goal.

Thank you again for your collaboration. The Fund looks forward to its continued partnership with DEQ. If you have questions or wish to discuss, please direct correspondence to myself and Mike Backe via email at ccunnington@givenspursley.com and mbacke@olytech.com, respectively.

Sincerely,



Charlotte V. Cunnington

CVC/SLW

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