

Department of Environmental Quality
Standards and Procedures for Application of Risk Based Corrective Action at Petroleum Release Sites
IDAPA 58.01.24

Docket No. 58-0124-2401
Negotiated Rulemaking Summary
[Idaho Code § 67-5220\(3\)\(f\)](#)

This rulemaking has been initiated in compliance with [Executive Order No. 2020-01](#), Zero-Based Regulation (EO 2020-01), issued by Governor Little on January 16, 2020.

On March 6, 2024, the Notice of Intent to Promulgate Rules – Zero-Based Regulation (ZBR) Negotiated Rulemaking was published in the Idaho Administrative Bulletin, and on February 20, 2024, the preliminary draft rule was posted on DEQ’s website. Meetings were held on March 21, April 11, and May 9, 2024. Stakeholders and members of the public participated by receiving email notifications, attending the meetings, reviewing DEQ’s presentations, and submitting comments. Key information was posted on DEQ’s website and distributed to persons who participated in the negotiated rulemaking.

All comments received during the negotiated rulemaking process were considered by DEQ when making decisions regarding the development of the rule. An issue remains unresolved and is summarized below.

At the conclusion of the negotiated rulemaking process, DEQ submitted the draft rule to the Division of Financial Management for review. DEQ formatted the draft for publication as a proposed rule for public comment. The negotiated rulemaking record, which includes the negotiated rule drafts, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at <https://www.deq.idaho.gov/petroleum-release-corrective-action-docket-no-58-0124-2401/>.

Commenter	Rule Section	Comment Summary	DEQ Response
Petroleum Storage Tank Fund	700. GUIDANCE MANUAL	Due to the 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 requests 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 the suggestions for amendment but the Fund requests further edits.	Guidance is not enforceable so it will not have an impact on claims unless the Fund decides otherwise. DEQ has the duty to “make” the guidance as mandated in Section 700. The suggested changes imply that the regulated community will be collaboratively making the revisions. DEQ cannot force the regulated community to make revisions. Rather DEQ can seek input from the regulated community. Adding the phrase “of the rule, and subsequently,” blurs the distinction between rules and guidance. Because Section 700 addresses the development and revisions to the guidance manual whereas the Administrative Procedures Act describes the process for rulemaking, the suggested additional language is unnecessary. If there are material revisions to the guidance manual, it will go out to public comment as stated in the first sentence of Section 700, making the suggested last sentence unnecessary.
Petroleum Storage Tank Fund	800. TABLE Chemicals of Interest for Various Petroleum Products	Request that benzo(a)anthracene analysis be excluded from vapor intrusion risk evaluations.	DEQ did not make the requested change because, in being consistent with EPA’s regional screening levels (RSLs), there is an established RSL for benzo(a)anthracene and EPA has classified it as sufficiently volatile and toxic to pose an inhalation risk. DEQ’s toxicologist has verified this decision. DEQ will continue to follow IDAPA 58.01.24.500 and Appendix K in the Risk Evaluation Manual to address benzo(a)anthracene.

