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**RE: The Rules for the Control of Air Pollution in Idaho (IDAPA 58.01.01)**

Dear Idaho Department of Environmental Quality:

I am writing on behalf of the Idaho Conservation League (ICL) to submit comments on rulemaking Docket No. 58-0101-2401. Since 1973, the Idaho Conservation League has had a long history of involvement with the environmental protection of Idaho's air, water, and land. As Idaho's largest state-based conservation organization we represent over 25,000 members and supporters who have a deep personal interest in ensuring that our air quality is protected throughout the state.

We thank you for the opportunity to submit comments and ask that you please send us any response to public comments on this opportunity from the Idaho Department of Environmental Quality (DEQ). Please feel free to contact us if you have any questions or require additional information.

Sincerely,

**Will Tiedemann**  
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## Toxic Air Pollutant Increments

Per the DEQ “Notice of Rulemaking - Proposed Rule” document<sup>1</sup> this rulemaking is proposing to add the definitions of both “Toxic Air Pollutant Non-carcinogenic Increments” and “Toxic Air Pollutant Carcinogenic Increments” as “During negotiated rulemaking for Docket No. 58-0101-2101, these definitions were struck from Section 006 with the intention of moving them to Sections 585, 586, and 600. While the other definitions were moved to their respective sections, these definitions were inadvertently overlooked. DEQ is now adding these definitions as originally intended.”

Docket Number 58-0101-2101<sup>2</sup> was primarily conducted during 2021 through 2022 under the Zero-Based Rulemaking (ZBR) initiative. The removal of definitions was a major focus of this rulemaking and is well documented under the “Negotiated Rule Documents and Meeting Presentations” tab under the DEQ rulemaking webpage for Docket Number 58-0101-2101. In total, five different draft rules capture progressive changes and edits made to the Air Rules during this rulemaking. They are:

- Draft Rule Number 1: Dated October 12, 2021
- Draft Rule Number 2: Dated March 15, 2022
- Draft Rule Number 3: Dated March 29, 2022
- Draft Rule Number 4: Dated May 4, 2022
- Draft Rule Number 5: Dated August 31, 2022

Under subsection 006.125-127 for all five Draft Rules, the definitions for “Toxic Air Pollutant Carcinogenic Increments”, “Toxic Air Pollutant Non-carcinogenic Increments”, and “Toxic Substance” have been stricken. For Draft Rules 1 through 4 the following DEQ notes appears under the stricken definitions, “006.125-127 Discussion. Sections 585 and 586 define the increments. Section 161 defines toxic substances, which is broader than toxic air pollutants.” Draft Rule Number 5 simply shows the stricken definitions with no note. Under all five Draft Rules, the stricken definitions for “Toxic Air Pollutant Carcinogenic Increments and “Toxic Air Pollutant Non-carcinogenic Increments” do not appear added under subsections 585 and 586, respectively.

Based on a review of these draft rules, it does not appear there was “intention of moving” these definitions to Section 585 and 586. Instead, it appears DEQ considered these definitions redundant since “Section 585 and 586 define the increments”. It is unclear when or where DEQ believes there was such intention and why doing so is necessary.

The definition of Toxic Air Pollutant Carcinogenic Increments has been a central issue within the on-going administrative appeal of air quality Permit to Construct

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<sup>1</sup> <https://www2.deq.idaho.gov/admin/LEIA/api/document/download/22509>

<sup>2</sup> <https://www.deq.idaho.gov/air-quality-docket-no-58-0101-2101/>

P-2019.007 under Agency Case No. 0101-22-01 OAH Case No. 23-245-01<sup>3</sup>. ICL along with DEQ and the PTC holder, Perpetua Resources, are all parties to this case. While the full details of the case are too lengthy to discuss within these comments, the point of disagreement regarding the definition of Toxic Air Pollutant Carcinogenic Increments is relatively straight forward. DEQ and Perpetua resources have argued that compliance with the carcinogenic TAPs rules is demonstrated if a facility's carcinogen TAPs emissions do not result in a 1-in-100,000 probability of developing excess cancers over a seventy year lifetime. ICL has argued that compliance with the carcinogenic TAPs rules is instead demonstrated if a facility's year-over-year carcinogen TAPs emissions do not result in an operational boundary ambient TAPs concentration above the listed AACC (Subsection 586).

DEQ and Perpetua Resources have cited the previously existing definition for Toxic Air Pollutant Carcinogenic Increments numerous times within both written and oral appeal case arguments. Given that the appeal case of P-2019.007 is likely to result in a Board of Environmental Quality ordered clarification of how the definition of Toxic Air Pollutant Carcinogenic Increments is to be interpreted, it would be premature to reintroduce the previously existing definition into the Air Rules now.

DEQ should remove the definitions of Toxic Air Pollutant Carcinogenic Increments and Toxic Air Pollutant Non-carcinogenic Increments until after the ultimate resolution of Agency Case No. 0101-22-01/OAH Case No. 23-245-01.