

Dear Senators BURTENSHAW, Adams, Semmelroth, and
Representatives BARBIERI, Furniss, Necochea:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Department of Environmental Quality:
IDAPA 58.01.02 - Water Quality Standards - Proposed Rule (Docket No. 58-0102-2401).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative Services. The final date to call a meeting on the enclosed rules is no later than 09/12/2024. If a meeting is called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis from Legislative Services. The final date to hold a meeting on the enclosed rules is 10/10/2024.

The germane joint subcommittee may request a statement of economic impact with respect to a proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement, and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has been held.

To notify Research and Legislation, call 334-4854, or send a written request to the address on the memorandum attached below.



Terri Kondeff
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Resources & Environment Committee and the House Environment, Energy & Technology Committee

FROM: Deputy Division Manager - Katharine Gerrity

DATE: August 26, 2024

SUBJECT: Department of Environmental Quality

IDAPA 58.01.02 - Water Quality Standards - Proposed Rule (Docket No. 58-0102-2401)

Summary and Stated Reasons for the Rule

The Department of Environmental Quality submits notice of proposed rulemaking at IDAPA 58.01.02 - Water Quality Standards. According to the department, the rulemaking has been initiated to remove Sections 851, Petroleum Release Reporting, Investigation, and Confirmation, and 852, Petroleum Release Response and Corrective Action, from IDAPA 58.01.02, Water Quality Standards, and move to IDAPA 58.01.24, Standards and Procedures for Application of Risk Based Corrective Action at Petroleum Release Sites (Docket No. 58-0124-2401). The department states that Sections 851 and 852 address petroleum releases and storage tanks, which are not water quality standard regulations, and are better suited for placement in IDAPA 58.01.24. The department notes that Docket No. 58-0102-2401 is a companion rulemaking to Docket No. 58-0124-2401 for the purpose of moving sections 851 and 852 from one chapter to the other.

Negotiated Rulemaking / Fiscal Impact

The department states that negotiated rulemaking was not conducted due to the simple nature of the rulemaking and the transfer of Sections 851 and 852 to IDAPA 58.01.24 was negotiated under Docket No. 58-0124-2401. The department states that there is no fiscal impact as a result of the rulemaking. The department also indicates that the proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

Statutory Authority

The rulemaking appears to be authorized pursuant to Sections 39-105 and 39-107, Idaho Code, and Chapter 36, Title 39, Idaho Code.

cc: Department of Environmental Quality
Janeena White

*** PLEASE NOTE ***

Paul Headlee, Deputy Director Matt Drake, Manager Keith Bybee, Manager April Renfro, Manager Norma Clark, Manager
Legislative Services Office Research & Legislation Budget & Policy Analysis Legislative Audits Information Technology

Statehouse, P.O. Box 83720
Boise, Idaho 83720-0054

Tel: 208-334-2475
legislature.idaho.gov

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 – WATER QUALITY STANDARDS

DOCKET NO. 58-0102-2401

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This action is authorized by Sections 39-105, 39-107, and Chapter 36, Title 39, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before August 23, 2024. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: This rulemaking has been initiated to remove Sections 851, Petroleum Release Reporting, Investigation, and Confirmation, and 852, Petroleum Release Response and Corrective Action, from IDAPA 58.01.02, Water Quality Standards, and move to IDAPA 58.01.24, Standards and Procedures for Application of Risk Based Corrective Action at Petroleum Release Sites (Docket No. 58-0124-2401). Sections 851 and 852 address petroleum releases and storage tanks, which are not water quality standard regulations as described in Section 1314(a) of the Clean Water Act and are better suited for placement in IDAPA 58.01.24. Docket No. 58-0102-2401 is a companion rulemaking to Docket No. 58-0124-2401 for the purpose of moving sections 851 and 852 from one chapter to the other.

The proposed rule text is in legislative format. Language the agency proposes to remove is struck out. It is these deletions to which public comment should be addressed. If adopted by the Idaho Board of Environmental Quality and approved by concurrent resolution of the 2025 Idaho State Legislature, the rule will become effective on July 1, 2025, unless otherwise specified in the concurrent resolution.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state General Fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: Not applicable.

NEGOTIATED RULEMAKING: Negotiated rulemaking was not conducted. DEQ determined that negotiated rulemaking is not feasible due to the simple nature of this rulemaking, and the transfer of Sections 851 and 852 to IDAPA 58.01.24 was negotiated under Docket No. 58-0124-2401.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: Not applicable.

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning this proposed rulemaking, contact Elizabeth Spelsberg at elizabeth.spelsberg@deq.idaho.gov or (208) 373-0158. The webpage for this docket is available at <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/water-quality-docket-no-58-0102-2401/>.

SUBMISSION OF WRITTEN COMMENTS: Anyone may submit written comments regarding this proposed rule. The Department will consider all written comments received on or before September 6, 2024. Submit written comments to:

Elizabeth Spelsberg
Department of Environmental Quality
1410 N. Hilton, Boise, ID 83706
elizabeth.spelsberg@deq.idaho.gov

Dated this 7th day of August, 2024.

Janeena White
Senior Operations Analyst
Department of Environmental Quality
1410 N. Hilton Street
Boise, Idaho 83706
Phone: (208)373-0502
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0102-2401
(Only Those Sections With Amendments Are Shown.)

58.01.02 – WATER QUALITY STANDARDS

~~851. PETROLEUM RELEASE REPORTING, INVESTIGATION, AND CONFIRMATION.~~

~~01. Reporting of Suspected Releases for All Petroleum Storage Tank Systems.~~ Owners and operators of petroleum storage tank (PST) systems shall report to the Department within twenty-four (24) hours and follow the procedures in Subsection 851.03 for any of the following conditions: (3-31-22)

~~a. The discovery by owners and operators or others of a petroleum release at the PST site or in the surrounding area other than spills and overfills described in Subsection 851.04, such as the presence of free product or dissolved product in nearby surface water or ground water or vapors in soils, basements, sewer or utility lines. (3-31-22)~~

~~b. Unusual operating conditions observed by owners and operators such as the erratic behavior of product dispensing equipment, the sudden loss of product from the PST system, or an unexplained presence of water in the PST system, unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced. (3-31-22)~~

~~c. Monitoring results from a release detection method that indicate a release may have occurred unless: (3-31-22)~~

~~i. The monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result; or (3-31-22)~~

~~ii. In the case of inventory control, a second month of data does not confirm the initial result. (3-31-22)~~

~~02. Investigation Due to Off Site Impacts.~~ When required by the Department, owners and operators shall follow the procedures in Subsection 851.03 to determine if the PST system is the source of off site impacts. These impacts include the discovery of petroleum, such as the presence of free product or dissolved product in nearby surface water or ground water or vapors in soils, basements, sewer and utility lines, that has been observed by the Department or brought to its attention by another party. (3-31-22)

~~03. Release Investigation and Confirmation Steps.~~ Unless corrective action is initiated in accordance with Section 852, owners and operators shall immediately investigate and confirm all suspected releases of petroleum within seven (7) days, or another time period specified by the Department, of discovery and using at least one (1) of

the following steps or another procedure approved by the Department: (3-31-22)

~~a. Owners and operators shall conduct tightness tests that determine whether a leak exists in any portion of the PST system, including the tank, the attached delivery piping, and any connected tanks and piping. All such portions shall be tested either separately or together or in combinations thereof, as required by the Department. (3-31-22)~~

~~i. Owners and operators shall repair, replace or upgrade the PST system in accordance with applicable federal, state and local laws, and begin corrective action in accordance with Section 852 if the test results for the system, tank, or delivery piping indicate that a leak exists. (3-31-22)~~

~~ii. Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and if environmental contamination is not the basis for suspecting a release. (3-31-22)~~

~~iii. Owners and operators shall conduct a site check as described in Subsection 851.03.b. if the test results for the system, tank, and delivery piping do not indicate that a leak exists but environmental contamination is the basis for suspecting a release. (3-31-22)~~

~~b. Owners and operators shall measure for the presence of a release where contamination is most likely to be present. In selecting sample types, sample locations, and measurement methods, owners and operators shall consider the nature of the petroleum, the type of initial alarm or cause for suspicion, the type of backfill, the depth of ground water, and other factors appropriate for identifying the presence and source of the release. Methods of sample collection and sample analysis are subject to Department approval. (3-31-22)~~

~~i. If release has occurred, owners and operators shall begin corrective action in accordance with Section 852. (3-31-22)~~

~~ii. If test results for the PST system do not indicate that a release has occurred, further investigation is not required. (3-31-22)~~

~~04. Reporting and Cleanup of Above Ground Spills and Overfills. Owners and operators shall contain and immediately clean up an above ground spill or overflow of petroleum only after identifying and mitigating any fire, explosion and vapor hazards. (3-31-22)~~

~~a. An above ground spill or overflow of petroleum that results in a release that exceeds twenty five (25) gallons or that causes a sheen on nearby surface water shall be reported to the Department within twenty four (24) hours and owners and operators shall begin corrective action in accordance with Section 852. (3-31-22)~~

~~b. An above ground spill or overflow of petroleum that results in a release that is less than twenty five (25) gallons and does not cause a sheen on nearby surface water shall be reported to the Department only if cleanup cannot be accomplished within twenty four (24) hours. (3-31-22)~~

~~852. PETROLEUM RELEASE RESPONSE AND CORRECTIVE ACTION.~~

~~01. Release Response. Upon confirmation of a petroleum release in accordance with Section 851 or after a release from the PST system is identified in any other manner, owners and operators shall perform the following initial response actions within twenty four (24) hours: (3-31-22)~~

~~a. Identify and mitigate fire, explosion and vapor hazards; (3-31-22)~~

~~b. Take immediate action to prevent any further release of petroleum into the environment; and (3-31-22)~~

~~e. Report the release to the Department. (3-31-22)~~

~~02. Initial Abatement Measures. Unless directed to do otherwise by the Department, owners and operators shall perform the following abatement measures: (3-31-22)~~

~~a. Remove as much of the petroleum from the leaking PST system as is necessary to prevent further release to the environment; (3-31-22)~~

~~b. Visually inspect any above ground releases or exposed below ground releases and prevent further migration of the released substance into surrounding soils, surface water and ground water; (3-31-22)~~

~~c. Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the PST site and entered into subsurface structures such as sewers or basements; (3-31-22)~~

~~d. Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or corrective action activities. If these remedies include treatment or disposal of soils, the owner and operator shall comply with applicable state and local requirements. (3-31-22)~~

~~**03. Initial Site Characterization.** Unless directed to do otherwise by the Department, owners and operators shall assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in Subsection 852.02. This information shall include, but is not necessarily limited to the following: (3-31-22)~~

~~a. Data on the nature and estimated quantity of release; (3-31-22)~~

~~b. Data from available sources and/or site investigations concerning the following factors: surrounding populations, water quality, use and approximate location of wells potentially affected by the release, subsurface soil condition, locations of subsurface sewers, climatological conditions and land use; and (3-31-22)~~

~~c. Data from measurements that assess the site for the presence of petroleum contamination including: (3-31-22)~~

~~i. Measurements for the presence of a release where contamination is most likely to be present, unless the presence and source of the release have been confirmed in accordance with the site check required by Subsection 851.03.b. or the closure site assessments required by applicable federal, state, or local laws. Sample types, sample locations and analytical methods are subject to Department approval and shall be based on consideration of the nature of the petroleum, the type of backfill, depth to ground water and other factors appropriate for identifying the presence and source of the release; and (3-31-22)~~

~~ii. Measurements to determine the presence of free product. (3-31-22)~~

~~d. Within forty-five (45) days of release confirmation, or another time specified by the Department, owners and operators shall submit the information collected in compliance with Subsection 852.03 to the Department in a manner that demonstrates its applicability and technical adequacy to be reviewed as follows: (3-31-22)~~

~~i. If the Department determines that the information shows that no further corrective action is required, owners and operators shall be notified accordingly. (3-31-22)~~

~~ii. If the Department determines that the information shows petroleum contamination is limited to soils, owners and operators shall treat or dispose of contaminated soils in accordance with Department guidelines, and need not perform any further corrective action. (3-31-22)~~

~~iii. If the Department determines that the information shows that any of the conditions in Subsections 852.05.a. through 852.05.c. exist, owners and operators shall comply with the requirements in Subsections 852.04 through 852.07. (3-31-22)~~

~~**04. Free Product Removal.** At sites where investigations under Subsection 852.03.e.ii. indicate the presence of free product, owners and operators shall remove free product to the maximum extent practicable as determined by the Department while continuing, as necessary, any actions initiated under Subsections 852.01 through~~

~~852.03 or preparing for actions required under Subsections 852.05 and 852.06. In meeting the requirements of Subsection 852.04, owners and operators shall:~~ (3-31-22)

~~a. Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated areas by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges or disposes of recovery by products in compliance with applicable local, state and federal regulations;~~ (3-31-22)

~~b. Use abatement of free product migration as a minimum objective for the design of the free product removal system;~~ (3-31-22)

~~e. Handle any flammable products in a safe and competent manner to prevent fires or explosions; and~~ (3-31-22)

~~d. Unless directed to do otherwise by the Department, prepare and submit to the Department for review and approval, within forty-five (45) days after confirming a release, a free product removal report that provides at least the following information:~~ (3-31-22)

~~i. The name of the person(s) responsible for implementing the free product removal measures;~~ (3-31-22)

~~ii. The estimated quantity, type and thickness of free product observed or measured in wells, boreholes, and excavations;~~ (3-31-22)

~~iii. The type of free product recovery system used;~~ (3-31-22)

~~iv. Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;~~ (3-31-22)

~~v. The type of treatment applied to, and the effluent quality expected from, any discharge;~~ (3-31-22)

~~vi. The steps that have been or are being taken to obtain necessary permits for any discharge; and~~ (3-31-22)

~~vii. The disposition of the recovered free product.~~ (3-31-22)

~~**05. Investigations for Soil and Water Cleanup.** If any of the conditions in Subsections 852.05.a. through 852.05.c. exist, and unless directed to do otherwise by the Department, owners and operators shall notify the Department and conduct investigations in accordance with Subsection 852.05.d. of the release, the release site, and the surrounding area possibly affected by the release in order to determine the full extent and location of soils contaminated by the petroleum release and the presence and concentrations of dissolved product contamination in the ground water or surface water:~~ (3-31-22)

~~a. There is evidence that ground water or surface water has been affected by the release such as found during release confirmation or previous corrective action measures;~~ (3-31-22)

~~b. Free product is found to need recovery in compliance with Subsection 852.04;~~ (3-31-22)

~~e. There is evidence that contaminated soils may affect nearby ground water, surface water or the public health and have not been treated or disposed of in accordance with Subsection 852.03.d.ii.~~ (3-31-22)

~~d. Unless determined otherwise by the Department, investigations conducted under this Subsection, 852.05, shall include, but are not necessarily limited to the following:~~ (3-31-22)

~~i. The physical and chemical characteristics of the petroleum product including its toxicity, persistence, and potential for migration;~~ (3-31-22)

- ii. ~~The type and age of the PST system, inventory loss, and type of containment failure;~~ (3-31-22)
 - iii. ~~The hydrogeologic characteristics of the release site and the surrounding area;~~ (3-31-22)
 - iv. ~~The background concentrations of contaminants in soil, surface water and ground water;~~ (3-31-22)
 - v. ~~A site drawing, showing boring and monitoring well locations, nearby structures, under ground utilities, drainage ditches, streams, suspected locations of leakage, direction of ground water flow, and any domestic or irrigation wells within a one-fourth (1/4) mile radius of the site;~~ (3-31-22)
 - vi. ~~Information on ownership and use of any well identified pursuant to Subsection 852.05.d.v.;~~ (3-31-22)
 - vii. ~~Site borings and well logs and rationale for choosing drilling locations, and a description of methods and equipment used for all water and soil sampling;~~ (3-31-22)
 - viii. ~~A description of contaminant stratigraphy with accompanying geologic cross section drawings;~~ (3-31-22)
 - ix. ~~A demonstration and description of the horizontal and vertical extent of contamination, free product thickness, modes and rate of contaminant transport, and concentrations of dissolved constituents in surface water and ground water;~~ (3-31-22)
 - x. ~~The potential effects of residual contamination on nearby surface water and ground water; and~~ (3-31-22)
 - xi. ~~A discussion of laboratory analytical methods and information pertaining to laboratory certification.~~ (3-31-22)
- ~~e. Owners and operators shall submit the information collected in investigating the release site in compliance with Subsection 852.05 for the Department's review and approval in accordance with a schedule established by the Department as provided in Subsection 852.07. (3-31-22)~~

~~**06. Corrective Action Plan.** At any point after reviewing the information submitted in compliance with Subsections 852.01 through 852.05, the Department may require owners and operators to submit additional information or to develop and submit a corrective action plan for responding to contaminated soils, surface water and ground water. If a plan is required, owners and operators shall submit the plan according to a schedule and criteria established by the Department as provided in Subsection 852.07. Alternatively, owners and operators may, after fulfilling the requirements of Subsections 852.01 through 852.05, choose to submit a corrective action plan for responding to contaminated soil, surface water and ground water. In either case, owners and operators are responsible for submitting a plan that provides for adequate protection of human health and the environment as determined by the Department, and shall modify their plan as necessary to meet the Department's standards. (3-31-22)~~

~~**a.** The Department will approve the corrective action plan only after ensuring that implementation of the plan will adequately protect human health and the environment. In making this determination, the Department should consider the following factors as appropriate: (3-31-22)~~

- ~~i. The maximum contaminant levels for drinking water or other health-based levels for water and soil which consider the potential exposure pathway of the petroleum product; (3-31-22)~~
- ~~ii. The physical and chemical characteristics of the petroleum product including its toxicity, persistence, and potential for migration; (3-31-22)~~
- ~~iii. The hydrogeologic characteristics of the release site and the surrounding area; (3-31-22)~~
- ~~iv. The proximity, quality, and current and future uses of nearby surface water and ground water; (3-31-22)~~

- v. ~~The potential effects of residual contamination on nearby surface water and ground water; and~~ (3-31-22)
- vi. ~~Other information assembled in compliance with Section 851.~~ (3-31-22)
- ~~**b.** Upon approval of the corrective action plan or as directed by the Department, owners and operators shall implement the plan including modification to the plan made by the Department. Owners and operators shall monitor, evaluate, and report the results of implementing the plan in accordance with a schedule and criteria established by the Department as provided in Subsection 852.07.~~ (3-31-22)
- ~~**e.** Owners and operators may, in the interest of minimizing environmental contamination and promoting more effective cleanup, begin cleanup of soil, surface water, and ground water before the corrective action plan is approved provided that they:~~ (3-31-22)
 - i. ~~Notify the Department of their intention to begin cleanup;~~ (3-31-22)
 - ii. ~~Comply with any conditions imposed by the Department, including halting cleanup or mitigating adverse consequences from cleanup activities; and~~ (3-31-22)
 - iii. ~~Incorporate these self-initiated cleanup measures in the corrective action plan that is submitted to the Department for approval.~~ (3-31-22)
- ~~**07. Compliance.** If the Department determines that any of the conditions in 852.05.a. through 852.05.e. exist, owners and operators shall be given an opportunity to enter into a consent order with the Department.~~ (3-31-22)
 - ~~**a.** The Department shall send owners and operators a consent order that sets forth at least the following:~~ (3-31-22)
 - i. ~~A schedule for owners and operators to submit the information collected in investigating the release site in compliance with Subsection 852.05.~~ (3-31-22)
 - ii. ~~A schedule for owners and operators to submit, and a criteria for, a corrective action plan in compliance with Subsection 852.06.~~ (3-31-22)
 - iii. ~~A schedule for the Department to review, modify, and approve the site release investigation and corrective action plan.~~ (3-31-22)
 - iv. ~~A schedule and criteria for owners and operators to implement a corrective action plan, and monitor, evaluate, and report the results of implementing the corrective action plan.~~ (3-31-22)
 - ~~**b.** Owners and operators shall be given thirty (30) days from receipt of the consent order in which to reach an agreement with the Department regarding the terms of the consent order.~~ (3-31-22)
 - ~~**e.** If owners and operators cannot reach an agreement with the Department within thirty (30) days, the Department shall establish a schedule and criteria with which owners and operators shall comply in order to meet the requirements of Subsections 852.05 and 852.06.~~ (3-31-22)

~~8531.~~ -- 999. (RESERVED)