

Department of Environmental Quality
Rules Regulating Underground Storage Tank Systems, 58.01.07
Docket No. 58-0107-1601

Negotiated Rulemaking Summary
Idaho Code § 67-5220(3)(f)

This rulemaking has been initiated to adopt into state rules the newly revised federal Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (USTs), 40 CFR Part 280, and to establish a fee structure.

The Notice of Negotiated Rulemaking was published in the April 2016 issue of the Idaho Administrative Bulletin and a preliminary draft rule was made available for public review. Meetings were held on April 28 and May 26, 2016.

Key information was posted on the DEQ rulemaking web page and distributed to the public. Members of the public participated in the negotiated rulemaking process by attending the meetings and by submitting written comments. All comments received during the negotiated rulemaking process were considered by DEQ when making decisions regarding development of the rule.

The negotiated rule drafts contain revisions made based on meeting discussions. At the conclusion of the negotiated rulemaking process, DEQ formatted the final draft (Draft No. 4) for publication as a proposed rule in the Idaho Administrative Bulletin. The negotiated rulemaking record, which includes the negotiated rule drafts, written public comments, and documents distributed during the negotiated rulemaking process, is available at www.deq.idaho.gov/58-0107-1601.

DEQ elected not to revise the draft rule in response to certain comments received during the negotiated rulemaking process. Responses to those comments are provided below.

Maverik, Inc. suggested DEQ add language to the rule which allows any facility that is equipped with sump sensors that are configured and programmed in accordance with section 101 ("Alternative Periodic Testing of Containment Sumps Used for Interstitial Monitoring of Piping") to use those sump sensors as line leak detection, therefore, forgoing the need to install line leak detectors.

DEQ considered this request and will not be incorporating the language for the following reasons:

(1) EPA Region 10 has a written policy from 2002 called "Line Leak Detection and Stand Alone Sump Sensors." This policy says that EPA inspectors will take enforcement actions when they encounter sump sensors that are used to comply with line leak detection requirements. DEQ does not want to jeopardize State Program Approval (SPA) by including language that is contrary to EPA's interpretation of the Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tank (40 CFR Part 280) regulations.

(2) The state that does allow sump sensors to serve as line leak detectors, Wyoming, does not have SPA. DEQ intends to maintain its SPA.

(3) The manufacturers of sump sensors do not list, sell, or advertise sump sensors as being suitable for line leak detection nor do they supply any performance claims on their use as a line leak detector.

Following manufacturer performance claims is a requirement of 40 CFR Part 280.40(a)(4).