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| **PROJECT NAME** | DIVISION 12 RULEMAKING | **DATE** | 11/28/12 |
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| **DEQ LEAD** | Jenny Root |
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| **DEQ SUBJECT EXPERT**  | Les Carlough |
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| **PROJECT FACILITATOR**  | Ron Doughten |
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| **ADVISORY COMMITTEE** |
| Gerald Linder; Don Haagensen; Chris Rich; David Misel; Aubrey Baldwin; Paul Koprowski; Merlyn Hough; Matt Criblez; Mike O’Connor ; Courtney Johnson; Phil Houk |
| **ISSUE STATEMENT FOR FIRST MEETING** |
| The current penalty formula is based on a statutory maximum penalty established before the legislature raised the maximum and therefore may not result in sufficiently potent penalties.  |
| **SITUATION/BACKGROUND** |
| * Division 12 rules contain a formula for assessing penalties for environmental violations, based on a number of considerations.
* The first step in determining a penalty amount is to identify which “matrix” applies, and this step is the most influential in establishing the size of the penalty.
* The current arrangement of the matrices is designed to produce penalties with a maximum of $10,000, consistent with the statutory maximum set in 1973.
* In 2009, the legislature raised that statutory maximum to $25,000.
* There is a need to assess whether and how the matrices should be modified in consideration of the new maximum.
* Other less-influential steps in the penalty calculation also affect the penalty amount and should be considered as part of the final rulemaking package. DEQ is currently reviewing those details – possible changes from the DEQ programs will be brought to this committee for review.
* A separate advisory committee is established to review possible changes in how penalties for spills of oil and hazardous material are calculated – possible changes from the spill advisory committee will be brought to this committee for review.
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| **SCOPE FOR FIRST MEETING**  |
| * In scope – identifying the general maximum penalty size for the most significant violations, creating new matrices; modifying the dollar amounts of new or existing matrices; and moving categories of alleged violators between matrices.
* Out of scope – whether DEQ should penalize particular violations; and other factors relating to penalty calculations.
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| **SCOPE FOR SECOND MEETING**  |
| * In scope – additional comments on the matrices proposal that DEQ will provide after hearing the suggestions from the first meeting; and any comments or suggestions on any other aspect of the proposed Division 12 amendments.
* Out of scope – whether DEQ should penalize particular violations.
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| **COMMITTEE OUTCOME** |
| * Suggestions and comments from committee members that reflect their own perspectives and beliefs about the penalty calculation formula and process. The committee is comprised of various interests and perspectives and we do not expect or need consensus on all issues. DEQ will evaluate and consider all perspectives and will work toward achieving the best result for presentation to the public in the formal notice and comment process.
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| **TARGET DATES** |
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| STEP I | First meeting: initial matrix comments | November 28, 2012 |  |
| STEP II | Interim review of progress | est. February 15, 2013 |
| STEP III | Second meeting, discuss draft | est. early March, 2013 |
| STEP IV | Completion of rulemaking proposal | est. May, 2013 |
| STEP V | Notice to Secretary of State | June 15, 2013 |
| STEP VI | Public Notice and Comment Period | July 1, 2013 |
| STEP VII | Possible public hearings | late summer 2013 |
| STEP VIII | Adoption by EQC | est. October 2013 |  |
| **PROFESSIONAL BEHAVIOR** |
| We agree to:* listen actively and respect the opinions of others.
* be clear and concise.
* be honest about what we know and don't know.
* offer constructive suggestions.
* communicate the reasons for our suggestion.
* remain positive even if delivering negative information.
* encourage less assertive participants to voice their opinions.
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