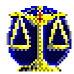
# APPENDIX XIII

# How Current is this Law?

Idaho Statutes and Constitutions are updated to the web July 1 following the legislative session.

Idaho Statutes and Constitutions are current through the 2017 Legislative Session.

 **Idaho Statutes**

# TITLE 39 HEALTH AND SAFETY

## CHAPTER 1 ENVIRONMENTAL QUALITY — HEALTH


| | |
|---|---|
| 39-101 | SHORT TITLE. |
| 39-102 | STATE POLICY ON ENVIRONMENTAL PROTECTION. |
| 39-102A | LEGISLATIVE INTENT IN CREATING DEPARTMENT OF ENVIRONMENTAL QUALITY. |
| 39-103 | DEFINITIONS. |
| 39-104 | DEPARTMENT OF ENVIRONMENTAL QUALITY — CREATION. |
| 39-104A | AUTHORITY TO MAKE RULES REGULATING LARGE SWINE FEEDING OPERATIONS — FINANCIAL ASSURANCES. |
| 39-105 | POWERS AND DUTIES OF THE DIRECTOR. |
| 39-106 | DIRECTOR — ADDITIONAL POWERS AND DUTIES — TRANSFER AND CONTINUATION OF RULES AND OTHER PROCEEDINGS. |
| 39-107 | BOARD — COMPOSITION — OFFICERS — COMPENSATION — POWERS — SUBPOENA — DEPOSITIONS — REVIEW — RULES. |
| 39-107A | REAL PROPERTY IN BUNKER HILL CLEANUP SITE. |
| 39-107B | DEPARTMENT OF ENVIRONMENTAL QUALITY FUND. |
| 39-107C | ENVIRONMENTAL PROTECTION TRUST FUND ESTABLISHED. |
| 39-107D | RULES OF DEPARTMENT OR BOARD. |
| 39-108 | INVESTIGATION — INSPECTION — RIGHT OF ENTRY — VIOLATION — ENFORCEMENT — PENALTY — INJUNCTIONS. |
| 39-109 | COMMENCEMENT OF CIVIL ENFORCEMENT ACTIONS — CRIMINAL ACTIONS AUTHORIZED — DUTIES OF ATTORNEY GENERAL. |
| 39-110 | REGISTRATION OF PERSONS ENGAGED IN OPERATIONS OR CONSTRUCTION WHERE AIR POLLUTION IS A FACTOR — REPORTS. |
| 39-111 | AVAILABILITY OF RECORDS. |
| 39-112 | EMERGENCY — ORDER — HEARING — MODIFICATION, AFFIRMANCE, OR SETTING ASIDE. |
| 39-113 | TRANSFER OF EMPLOYEES. |
| 39-114 | OPEN BURNING OF CROP RESIDUE. |
| 39-115 | POLLUTION SOURCE PERMITS. |
| 39-116 | COMPLIANCE SCHEDULES. |

39-116A COMPLIANCE AGREEMENT SCHEDULES.

39-116B VEHICLE INSPECTION AND MAINTENANCE PROGRAM.

39-117 CRIMINAL VIOLATION — PENALTY.

39-118 REVIEW OF PLANS.

39-118A ORE PROCESSING BY CYANIDATION.

39-118B RELATIONSHIP TO FEDERAL LAW.

39-118C LEGISLATIVE FINDINGS AND DECLARATION OF PURPOSE.

39-118D IDAHO AIR QUALITY PERMITTING FUND.

39-118E SMALL BUSINESS ASSISTANCE.

39-119 COLLECTION OF FEES FOR SERVICES.

39-120 DEPARTMENT OF ENVIRONMENTAL QUALITY PRIMARY ADMINISTRATIVE AGENCY — AGENCY RESPONSIBILITIES.

39-121 DEFINITIONS.

39-122, 39-123. [REPEALED]

39-124 LEGISLATIVE FINDINGS – INTENT. [NULL AND VOID]

39-125 MORATORIUM ON CONSTRUCTION OF CERTAIN COAL FIRED POWER PLANTS – REPORT. [NULL AND VOID]

39-126 DUTIES OF STATE AND LOCAL UNITS OF GOVERNMENT.

39-127 APPLICATION OF FERTILIZERS AND PESTICIDES.

39-128 APPLICABILITY — PROMULGATION OF RULES — ESTABLISHMENT OF ZONES — COMBUSTOR CHARGING COMPOSITION AND RECORDKEEPING — REPORT TO LOCAL GOVERNMENT — PERMIT PROCESSING.

39-129 APPLICABILITY — DEFINITION OF LOCAL GOVERNMENT AND MANDATES — AUTHORIZATION FOR LOCAL GOVERNMENT AGREEMENTS — ADOPTION OF RULES — ESTABLISHMENT OF SCHEDULES — PRIORITY OF CONSIDERATIONS — REPORT AND RECOMMENDATIONS.

39-130 REMOVAL — REMEDIATION — BUNKER HILL MINING AND METALLURGICAL COMPLEX SUPERFUND FACILITY.

39-131 – 39-136 [REPEALED].

39-137 – 39-138 [RESERVED].

39-139 – 39-170 [AMENDED AND REDESIGNATED]

39-171 LEGISLATIVE FINDINGS AND PURPOSE.

39-172 DEFINITIONS.

39-173 COMMITTEE — MEMBERS — TERMS.

39-174 COMMITTEE DUTIES — MEETINGS.

39-175 [RESERVED]

39-175A LEGISLATIVE FINDINGS AND PURPOSES.

39-175B RELATIONSHIP BETWEEN STATE AND FEDERAL LAW.

39-175C APPROVAL OF STATE NPDES PROGRAM.

39-175D IDAHO POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT DECISIONS AND APPEAL OF DECISIONS.

39-175E IDAHO POLLUTANT DISCHARGE ELIMINATION SYSTEM PROGRAM INVESTIGATION, INSPECTION AND ENFORCEMENT AUTHORITIES.

TITLE 39
HEALTH AND SAFETY
CHAPTER 1
ENVIRONMENTAL QUALITY — HEALTH

39-101. SHORT TITLE. Sections 39-101 through 39-130, Idaho Code, may be known and cited as the "Idaho Environmental Protection and Health Act."

History:

[39-101, added 1972, ch. 347, sec. 1, p. 1017; am. 1986, ch. 60, sec. 1, p. 170.]

39-102. STATE POLICY ON ENVIRONMENTAL PROTECTION. (1) It is hereby recognized by the legislature that the protection of the environment and the promotion of personal health are vital concerns and are therefore of great importance to the future welfare of this state. It is therefore declared to be the policy of the state to provide for the protection of the environment and the promotion of personal health and to thereby protect and promote the health, safety and general welfare of the people of this state.

(2) The goal of the legislature in enacting the ground water quality protection act of 1989 shall be to maintain the existing high quality of the state’s ground water and to satisfy existing and projected future beneficial uses including drinking water, agricultural, industrial and aquacultural water supplies. All ground water shall be protected as a valuable public resource against unreasonable contamination or deterioration. The quality of degraded ground water shall be restored where feasible and appropriate to support identified beneficial uses.

(3) In enacting this law, the legislature intends to prevent contamination of ground water from point and nonpoint sources of contamination to the maximum extent practical. In attaining the goals enumerated in subsections (1) and (2) of this section, the legislature wishes to enumerate the following ground water quality protection goals:

(a) It is the policy of the state to prevent contamination of ground water from any source to the maximum extent practical.

(b) The discovery of any contamination that poses a threat to existing or projected future beneficial uses of ground water shall require appropriate actions to prevent further contamination. These actions may consist of investigation and evaluation or enforcement actions if necessary to stop further contamination or clean up existing contamination as required under the environmental protection and health act.

(c) All persons in the state should conduct their activities so as to prevent the nonregulated release of contaminants into ground water.

(d) Education of the citizens of the state is necessary to preserve and restore ground water quality.

(4) It is the policy of the state to protect ground water and to allow for the extraction of minerals above and within ground water. A mine operator shall protect current and projected future beneficial uses of ground water at a point of compliance designated pursuant to rules of the department. Degradation of ground water is allowed at a point of compliance if the mine operator implements the level of protection during mining activities appropriate for the aquifer category.

History:
[39-102, added 1972, ch. 347, sec. 2, p. 1017; am. 1989, ch. 421, sec. 1, p. 1028; am. 2015, ch. 223, sec. 1, p. 686.]

39-102A. LEGISLATIVE INTENT IN CREATING DEPARTMENT OF ENVIRONMENTAL QUALITY. The legislature finds and declares that:

(1) The creation and establishment of the department of environmental quality to protect human health and the environment as its sole mission is in the public's interest;

(2) That all existing, but no new rights, powers, duties, budgets, funds, contracts, rulemaking proceedings, administrative proceedings, contested cases, civil actions, and other matters relating to environmental protection as described in this chapter, vested in the director of the department of health and welfare and the board of health and welfare on January 1, 2000, shall be transferred to the board of environmental quality, the department of environmental quality and its director as described herein effective July 1, 2000;

(3) That protecting environmental values including, but not limited to, clean air, water and soil, reducing or eliminating environmental pollution arising from human activities, ensuring the proper treatment, storage and disposal of hazardous wastes and ensuring the proper cleanup and restoration of existing natural resources are vital interests of the state of Idaho;

(4) That it is in the interest of the state and its citizens to establish a department of environmental quality to carry out programs to protect human health and the environment, to enforce environmental laws and develop pollution prevention, compliance assistance and other environmental incentive programs;

(5) That the goals to protect human health and the environment can be best achieved by vesting responsibility for environmental protection as specified herein in a state department which has as its sole mission, protection for human health and the environment for the state of Idaho and its residents;

(6) The legislature further intends that environmental quality programs be promulgated and managed such that the benefits of pollution control measures have a reasonable relationship to the public health costs, private property rights, environmental, economic and energy impacts of such measures, provided that this section does not require the preparation of any economic, environmental or other statement;

(7) That the department of environmental quality shall utilize the designated program appropriations made to the department of health and welfare for environmental program functions, the division of environmental quality and the INEEL oversight program for fiscal year 2001.

History:
[39-102A, added 2000, ch. 132, sec. 4, p. 314.]

39-103. DEFINITIONS. Whenever used or referred to in this chapter, unless a different meaning clearly appears from the context, the following terms shall have the following meanings:

(1) "Air contaminant" or "air contamination" means the presence in the outdoor atmosphere of any dust, fume, mist, smoke, radionuclide, vapor, gas or other gaseous fluid or particulate substance differing in composition from or exceeding in concentration the natural components of the atmosphere.

(2) "Air pollution" means the presence in the outdoor atmosphere

of any contaminant or combination thereof in such quantity of such nature and duration and under such conditions as would be injurious to human health or welfare, to animal or plant life, or to property, or to interfere unreasonably with the enjoyment of life or property.

(3) "Board" means the board of environmental quality.

(4) "Cyanidation" means the method of extracting target precious metals from ores by treatment with cyanide solution, which is the primary leaching agent for extraction.

(5) "Cyanidation facility" means that portion of a new ore processing facility, or a material modification or a material expansion of that portion of an existing ore processing facility that utilizes cyanidation and is intended to contain, treat, or dispose of cyanide containing materials including spent ore, tailings, and process water.

(6) "Department" means the department of environmental quality.

(7) "Director" means the director of the department of environmental quality or the director's designee.

(8) "Emission" means any controlled or uncontrolled release or discharge into the outdoor atmosphere of any air contaminant or combination thereof. Emission also includes any release or discharge of any air contaminant from a stack, vent or other means into the outdoor atmosphere that originates from an emission unit.

(9) "Laboratory" means not only facilities for biological, serological, biophysical, cytological and pathological tests, but also facilities for the chemical or other examination of materials from water or other substances.

(10) "Medical waste combustor" means any device, incinerator, furnace, boiler or burner, and any and all appurtenances thereto, which burns or pyrolyzes medical waste consisting of human or animal tissues, medical cultures, human blood or blood products, materials contaminated with human blood or tissues, used or unused surgical wastes, used or unused sharps, including hypodermic needles, suture needles, syringes and scalpel blades.

(11) "Person" means any individual, association, partnership, firm, joint stock company, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any other legal entity which is recognized by law as the subject of rights and duties.

(12) "Public water supply" or "public drinking water system" means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen (15) service connections, regardless of the number of water sources or configuration of the distribution system, or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes any collection, treatment, storage and distribution facilities that are under the control of the operator of such system and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control that are used primarily in connection with such system. Such term does not include any special irrigation district.

(13) "Solid waste" means garbage, refuse, radionuclides and other discarded solid materials, including solid waste materials resulting from industrial, commercial and agricultural operations and from community activities but does not include solid or dissolved materials in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flows or other

common water pollutants.

(14) "Solid waste disposal" means the collection, storage, treatment, utilization, processing or final disposal of solid waste.

(15) "State" means the state of Idaho.

(16) "Substantive" means that which creates, defines or regulates the rights of any person or implements, interprets or prescribes law or policy, but does not include statements concerning only the internal management of the department and not affecting private rights or procedures available to the public.

(17) "Water pollution" is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the state, or such discharge of any contaminant into the waters of the state as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare or to domestic, commercial, industrial, recreational, esthetic or other legitimate uses or to livestock, wild animals, birds, fish or other aquatic life.

(18) "Waters" means all accumulations of water, surface and underground, natural and artificial, public and private or parts thereof which are wholly or partially within, flow through or border upon this state except for private waters as defined in section 42-212, Idaho Code.

History:

[39-103, added 1992, ch. 305, sec. 4, p. 913; am. 1993, ch. 267, sec. 1, p. 900; am. 2000, ch. 132, sec. 5, p. 315; am. 2005, ch. 167, sec. 1, p. 509; am. 2010, ch. 23, sec. 1, p. 41.]

39-104. DEPARTMENT OF ENVIRONMENTAL QUALITY — CREATION. (1) There is created and established in the state government a department of environmental quality which shall for the purposes of section 20, article IV, of the constitution of the state of Idaho be an executive department of the state government. The executive and administrative power of this department shall be vested in the director of the department who shall be appointed and serve at the pleasure of the governor, with the advice and consent of the senate.

(2) The department shall be organized in such administrative divisions or regions as may be necessary in order to efficiently administer the department. Each division shall be headed by an administrator who shall be appointed by and serve at the pleasure of the director.

(3) The INL coordinator, deputy director, regional administrators and division administrators shall be nonclassified employees exempt from the provisions of chapter 53, title 67, Idaho Code.

(4) No provision of this title shall be interpreted as to supersede, abrogate, injure or create rights to divert or store water and apply water to beneficial uses established under section 3, article XV of the constitution of the state of Idaho and title 42, Idaho Code. Nothing in this title shall be construed to allow the department to establish a water right for minimum stream flows or a water right for minimum water levels in any lakes, reservoirs or impoundments. Minimum stream flows and minimum water levels may only be established pursuant to chapter 15, title 42, Idaho Code.

(5) Nothing in this title shall be construed to allow the department to establish or require minimum stream flows which would prevent any water from being diverted for irrigation purposes pursuant to existing water rights, or to establish or require minimum water levels in any lakes, reservoirs or impoundments in which any water is stored for irrigation purposes which would adversely affect existing

water rights or contracts with the federal government.
History:

[(39-104) 1973, ch. 87, sec. 3, p. 137; I.C., sec. 39-104b, am. and redesig. 1974, ch. 23, sec. 48, p. 633; am. 1995, ch. 365, sec. 1, p. 1276; am. 2000, ch. 132, sec. 6, p. 318; am. 2007, ch. 83, sec. 1, p. 221.]

39-104A. AUTHORITY TO MAKE RULES REGULATING LARGE SWINE FEEDING OPERATIONS — FINANCIAL ASSURANCES. (1) The state of Idaho is experiencing the development of large swine feeding operations which are inadequately controlled through existing state regulatory mechanisms. If not properly regulated, these facilities pose a threat to the state's surface and ground water resources. Due to existing rulemaking authority, the department of environmental quality is in the best position of all state agencies to modify its present rules and to make new rules to develop an adequate regulatory framework for large swine feeding operations.

(2) The department of environmental quality is authorized to modify its existing administrative rules and to make new rules regulating large swine feeding operations, as they shall be defined by the department. The department is authorized to work with the Idaho department of agriculture in the development of such rules.

(3) Owners and operators of swine facilities required to obtain a permit from the department of environmental quality to construct, operate, expand or close the facilities shall provide financial assurances demonstrating financial capability to meet requirements for operation and closure of the facilities and remediation. Requirements for financial assurances shall be determined by the agency as set forth in rule. Financial assurances may include any mechanism or combination of mechanisms meeting the requirements established by agency rule including, but not limited to, surety bonds, trust funds, irrevocable letters of credit, insurance and corporate guarantees. The mechanism(s) used to demonstrate financial capability must be legally valid, binding and enforceable under applicable law and must ensure that the funds necessary to meet the costs of closure and remediation will be available whenever the funds are needed. The director may retain financial assurances for up to five (5) years after closure of a facility to ensure proper closure and remediation, as defined by rule.

(4) Those swine facilities described in section 39-7905, Idaho Code, shall meet the requirements of section 39-7907, Idaho Code, in addition to the requirements of this chapter and the department of environmental quality's rules regulating swine facilities, prior to the issuance of a final permit by the director. The director shall require that swine facilities be constructed in a phased manner over a period of time and that no additional facilities be constructed until the director approves the associated waste treatment system.

(5) Nothing in this section prohibits the boards of county commissioners of any county or the governing body of any city from adopting regulations that are more stringent or that require greater financial assurances than those imposed by the department of environmental quality. A board of county commissioners of a county or a governing body of a city in which a swine facility is located may choose to determine whether the facility is properly closed according to imposed standards or may leave that determination to the department. This choice shall be communicated to the director in writing when closure begins; provided that determinations of closure by a board of county commissioners of a county or a governing body of

a city in which the swine facility is located shall not permit closure under less stringent requirements than those imposed by the department.

(6) As used in this section:

(a) "Animal unit" means a unit equaling two and one-half (2.5) swine, each weighing over twenty-five (25) kilograms (approximately fifty-five (55) pounds), or ten (10) weaned swine, each weighing under twenty-five (25) kilograms. Total animal units are calculated by adding the number of swine weighing over twenty-five (25) kilograms multiplied by four-tenths (.4) plus the number of weaned swine weighing under twenty-five (25) kilograms multiplied by one-tenth (.1).

(b) "Facilities" or "facility" means a place, site or location or part thereof where swine are kept, handled, housed or otherwise maintained and includes, but is not limited to, buildings, lots, pens and animal waste management systems, and which has a one-time animal unit capacity of two thousand (2,000) or more animal units.

(c) "Large swine feeding operations" means swine facilities having a one-time animal unit capacity of two thousand (2,000) or more animal units.

(d) "One-time animal unit capacity" means the maximum number of animal units that a facility is capable of housing at any given time.

History:

[39-104A, added 1999, ch. 263, sec. 1, p. 669; am. 2000, ch. 132, sec. 7, p. 319; am. 2000, ch. 221, sec. 1, p. 614; am. 2001, ch. 103, sec. 14, p. 265; am. 2001, ch. 350, sec. 1, p. 1229; am. 2011, ch. 227, sec. 3, p. 621.]

39-105. POWERS AND DUTIES OF THE DIRECTOR. The director shall have the following powers and duties:

(1) All of the rights, powers and duties regarding environmental protection functions vested in the department of health and welfare, and its director, administered by the division of environmental quality, including, but not limited to, those provided by chapters 1, 4, 30, 36, 44, 58, 62, 64, 65, 66, 70, 71, 72 and 74, title 39, Idaho Code. The director shall have all such powers and duties as described in this section as may have been or could have been exercised by his predecessors in law, and shall be the successor in law to all contractual obligations entered into by predecessors in law. All hearings of the director shall be governed by the provisions of chapter 52, title 67, Idaho Code.

(2) The director shall, pursuant and subject to the provisions of the Idaho Code, and the provisions of this act, formulate and recommend to the board, rules as may be necessary to deal with problems related to water pollution, air pollution, solid waste disposal, and licensure and certification requirements pertinent thereto, which shall, upon adoption by the board, have the force of the law relating to any purpose which may be necessary and feasible for enforcing the provisions of this act, including, but not limited to, the prevention, control or abatement of environmental pollution or degradation including radionuclides and risks to public health related to any of the powers and duties described in this section. Any such rule may be of general application throughout the state or may be limited as to times, places, circumstances or conditions in order to make due allowance for variations therein.

(3) The director, under the rules adopted by the board, shall have the general supervision of the promotion and protection of the

environment of this state. The powers and duties of the director shall include, but not be limited to, the following:

(a) The issuance of licenses and permits as prescribed by law and by the rules of the board promulgated hereunder. For each air quality operating permit issued under title V of the federal clean air act and its implementing regulations, the director shall, consistent with the federal clean air act and its implementing regulations, expressly include a provision stating that compliance with the conditions of the permit shall be deemed compliance with the applicable requirements of the federal clean air act and the title V implementing regulations. The director may develop and issue general permits covering numerous similar sources, as authorized by 40 CFR 70.6(d) as may be amended, and as appropriate.

(b) The enforcement of rules relating to public water supplies and to administer the drinking water loan fund pursuant to chapter 76, title 39, Idaho Code, including making loans to eligible public drinking water systems as defined in the federal safe drinking water act as amended, and to comply with all requirements of the act, 42 U.S.C. 300f, et seq. and regulations promulgated pursuant to the act. This includes, but is not limited to, the development of and implementation of a capacity development strategy to ensure public drinking water systems have the technical, managerial and financial capability to comply with the national primary drinking water regulations; and the enhancement of protection of source waters for public drinking water systems.

(c) The establishment of liaison with other governmental departments, agencies and boards in order to effectively assist other governmental entities with the planning for the control of or abatement of environmental pollution. All of the rules adopted by the board hereunder shall apply to state institutions.

(d) The supervision and administration of a system to safeguard air quality and for limiting and controlling the emission of air contaminants.

(e) The supervision and administration of a system to safeguard the quality of the waters of this state including, but not limited to, the enforcement of rules relating to the discharge of effluent into the waters of this state and the storage, handling and transportation of solids, liquids, and gases which may cause or contribute to water pollution. For purposes of complying with the clean water act, the director may provide an exemption from additional reductions for those nonpoint sources that meet the applicable reductions set forth in an approved TMDL as defined in chapter 36, title 39, Idaho Code.

(f) The supervision and administration of administrative units whose responsibility shall be to assist and encourage counties, cities, other governmental units, and industries in the control of and/or abatement of environmental pollution.

(g) The administration of solid waste disposal site and design review in accordance with the provisions of chapter 74, title 39, Idaho Code, and chapter 4, title 39, Idaho Code, and in particular as follows:

(i) The issuance of a solid waste disposal site certificate in the manner provided in chapter 74, title 39, Idaho Code.

(ii) Provide review and approval regarding the design of solid waste disposal facilities and ground water monitoring systems and approval of all applications for flexible standards as provided in 40 CFR 258, in accordance with the

provisions of chapter 74, title 39, Idaho Code.

(iii) Cooperating and coordinating with operational monitoring of solid waste disposal sites by district health departments pursuant to authority established in chapters 4 and 74, title 39, Idaho Code.

(iv) The authority granted to the director pursuant to provisions of this subsection shall be effective upon enactment of chapter 74, title 39, Idaho Code, by the legislature.

(v) The authority to develop and propose rules as necessary to supplement details of compliance with the solid waste facilities act and applicable federal regulations, provided that such regulations shall not conflict with the provisions of this act nor shall such regulations be more strict than the requirements established in federal law or in the solid waste facilities act.

(h) The establishment, administration and operation of:

(i) A network of environmental monitoring stations, independent of the United States department of energy, within and around the facilities of the Idaho national laboratory to provide authoritative auditing and analysis of emissions, discharges or releases of pollutants to the environment, including the air, water and soil from such facilities; and

(ii) Programs within the department to utilize the data obtained from such monitoring, and any other relevant data, in the enforcement of applicable agreements, statutes and rules pertaining to such facilities and programs to review, analyze and participate in remedial decisions and other proposed actions and projects to ensure the protection of public health and the environment.

The director shall also monitor the implementation of agreements between the United States and the state of Idaho related to the operation and environmental protection obligations of the Idaho national laboratory and provide periodic information to the governor, the attorney general, the legislature and the people of Idaho concerning compliance with such agreements and obligations. The director shall have the power to enter into agreements with the United States department of energy in order to carry out the duties and authorities provided in this subsection.

(i) The enforcement of all laws, rules, regulations, codes and standards relating to environmental protection and health.

(j) The enhancement and protection of source waters of the state pursuant to rules of the board.

(4) The director, when so designated by the governor, shall have the power to apply for, receive on behalf of the state, and utilize any federal aid, grants, gifts, gratuities, or moneys made available through the federal government including, but not limited to, the federal water pollution control act, for use in or by the state of Idaho in relation to health and environmental protection.

(5) The director shall have the power to enter into and make contracts and agreements with any public agencies or municipal corporation for facilities, land, and equipment when such use will have a beneficial or recreational effect or be in the best interest in carrying out the duties imposed upon the department.

The director shall also have the power to enter into contracts for the expenditure of state matching funds for local purposes. This subsection will constitute the authority for public agencies or municipal corporations to enter into such contracts and expend money

for the purposes delineated in such contracts.

(6) The director is authorized to adopt an official seal to be used on appropriate occasions, in connection with the functions of the department or the board, and such seal shall be judicially noticed. Copies of any books, records, papers and other documents in the department shall be admitted in evidence equally with the originals thereof when authenticated under such seal.

History:

[39-105, added 1972, ch. 347, sec. 5, p. 1017; am. 1974, ch. 23, sec. 49, p. 633; am. 1980, ch. 325, sec. 1, p. 821; am. 1988, ch. 47, sec. 2, p. 56; am. 1989, ch. 308, sec. 3, p. 765; am. 1991, ch. 332, sec. 2, p. 860; am. 1992, ch. 307, sec. 1, p. 915; am. 1992, ch. 331, sec. 2, p. 991; am. 1993, ch. 139, sec. 22, p. 365; am. 1993, ch. 275, sec. 4, p. 928; am. 1994, ch. 75, sec. 1, p. 156; am. 1997, ch. 26, sec. 1, p. 36; am. 1999, ch. 174, sec. 1, p. 467; am. 2000, ch. 132, sec. 8, p. 319; am. 2004, ch. 335, sec. 2, p. 1002; am. 2007, ch. 83, sec. 2, p. 222.]

39-106. DIRECTOR — ADDITIONAL POWERS AND DUTIES — TRANSFER AND CONTINUATION OF RULES AND OTHER PROCEEDINGS. (1) The director shall exercise the following powers and duties in addition to all other powers and duties inherent in the position:

(a) Prescribe such policies and procedures as may be necessary for the administration of the department, the conduct and duties of the employees, the orderly and efficient management of department business, and the custody, use and preservation of department records, papers, books and property belonging to the state.

(b) Employ such personnel as may be deemed necessary, prescribe their duties and fix their compensation within the limits provided by the state personnel system law.

(c) Administer oaths for all purposes required in the discharge of his duties.

(d) Prescribe the qualifications of all personnel of the department on a nonpartisan merit basis, in accordance with the Idaho personnel system law, provided, however, that the administrators in charge of any division of the department shall serve at the pleasure of the director.

(e) Create such units, sections and subdivisions as are or may be necessary for the proper and efficient functioning of the department. [l]

(2) [l] All books, records, papers, documents, property, real and personal, unexpended appropriations and pending business in any way pertaining to the rights, powers and duties regarding environmental protection functions vested in the department of health and welfare and its director, administered by the division of environmental quality, are transferred to and vested in the department and its director. The department established by this act is empowered to acquire, by purchase or exchange, any property which in the judgment of the department is needful for the operation of the facilities and programs for which it is responsible and to dispose of, by sale or exchange, any property which in the judgment of the department is not needful for the operation of the same.

(3) All rules, standards, plans, licenses, permits, consent orders, compliance schedules, certification, and other agreements pertaining to environmental protection functions administered by the division of environmental quality heretofore adopted or issued by the [l] department of health and welfare and its director are transferred

to the department of environmental quality and shall remain in full force and effect until superseded. The terms "department" and "director" in such documents shall mean the department of environmental quality and its director, until such documents are amended.

(4) The department of environmental quality and its director shall be the successor to all rights, powers and duties of the department of health and welfare and its director regarding all rulemaking proceedings, administrative proceedings, contested cases, civil actions, contracts, delegations, authorizations and other matters pertaining to environmental protection functions.

History:

[39-106, added 1972, ch. 347, sec. 6, p. 1017; am. 1974, ch. 23, sec. 50, p. 633; am. 1987, ch. 223, sec. 2, p. 476; am. 1990, ch. 56, sec. 2, p. 129; am. 2000, ch. 59, sec. 1, p. 125; am. 2000, ch. 132, sec. 9, p. 324.]

39-107. BOARD — COMPOSITION — OFFICERS — COMPENSATION — POWERS — SUBPOENA — DEPOSITIONS — REVIEW — RULES.

(1) (a) The board of environmental quality shall consist of seven (7) members who shall be appointed by the governor, with the advice and consent of the senate. The members shall serve at the pleasure of the governor. Each member of the board shall be a citizen of the United States, a resident of the state of Idaho, and a qualified elector, and shall be appointed to assure appropriate geographic representation of the state of Idaho. Not more than four (4) members of the board shall be from any one (1) political party. Two (2) members of the board shall be chosen with due regard to their knowledge and interest in solid waste; two (2) members shall be chosen for their knowledge of and interest in air quality; two (2) members shall be chosen for their knowledge of and interest in water quality; and one (1) member shall be chosen with due regard for his knowledge of and interest in air, water and solid waste issues.

(b) The members of the board of environmental quality shall be appointed for a term of four (4) years. In appointing members whose terms begin in 2000, the governor shall designate three (3) members to be appointed for a term of three (3) years, two (2) members appointed for a term of four (4) years, and two (2) members appointed for a term of two (2) years. Successors to the members appointed for a term of less than four (4) years shall be appointed for a term of four (4) years thereafter.

(2) The board annually shall elect a chairman, a vice chairman, and a secretary, and shall hold such meetings as may be necessary for the orderly conduct of its business, and such meetings shall be held from time to time on seventy-two (72) hours' notice of the chairman or a majority of the members. Five (5) members shall be necessary to constitute a quorum at any regular or special meeting and the action of the majority of members present shall be the action of the board. The members of the board shall be compensated as provided in section 59-509(h), Idaho Code.

(3) The board, in furtherance of its duties under this act and under its rules, shall have the power to administer oaths, certify to official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony. The board may, if a witness refuses to attend or testify, or to produce any papers required by such subpoenas, report to the district court in and for the county in which the proceeding is

pending, by petition, setting forth that due notice has been given of the time and place of attendance of said witnesses, or the production of said papers, that the witness has been properly summoned, and that the witness has failed and refused to attend or produce the papers required by this subpoena before the board, or has refused to answer questions propounded to him in the course of said proceedings, and ask an order of said court compelling the witness to attend and testify and produce said papers before the board. The court, upon the petition of the board, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than ten (10) days from the date of the order, and then and there shall show cause why he has not attended and testified or produced said papers before the board. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the board and regularly served, the court shall thereupon order that said witness appear before the board at the time and place fixed in said order, and testify or produce the required papers. Upon failure to obey said order, said witness shall be dealt with for contempt of court.

(4) The director, his designee, or any party to the action may, in an investigation or hearing before the board, cause the deposition or interrogatory of witnesses or parties residing within or without the state, to be taken in the manner prescribed by law for like depositions and interrogatories in civil actions in the district court of this state, and to that end may compel the attendance of said witnesses and production of books, documents, papers and accounts.

(5) Any person aggrieved by an action or inaction of the department shall be afforded an opportunity for a fair hearing upon request therefor in writing pursuant to chapter 52, title 67, Idaho Code, and the rules promulgated thereunder. In those cases where the board has been granted the authority to hold such a hearing pursuant to a provision of the Idaho Code, the hearing may be conducted by the board at a regular or special meeting, or the board may designate hearing officers, who shall have the power and authority to conduct hearings in the name of the board at any time and place. In any hearing, a member of the board or hearing officer designated by it, shall have the power to administer oaths, examine witnesses, and issue in the name of the board subpoenas requiring the testimony of witnesses and the production of evidence relevant to any matter in the hearing.

(6) Any person adversely affected by a final determination of the board, may secure judicial review by filing a petition for review as prescribed under the provisions of chapter 52, title 67, Idaho Code. The petition for review shall be served upon the chairman of the board, the director of the department, and upon the attorney general of the state of Idaho. Such service shall be jurisdictional and the provisions of this section shall be the exclusive procedure for appeal.

(7) The board, by the affirmative vote of four (4) of its members, may adopt, amend or repeal the rules, codes, and standards of the department, that are necessary and feasible in order to carry out the purposes and provisions of this act and to enforce the laws of this state.

The rules and orders so adopted and established shall have the force and effect of law and may deal with any matters deemed necessary and feasible for protecting the environment of the state.

(8) All rulemaking proceedings and hearings of the board shall be governed by the provisions of chapter 52, title 67, Idaho Code.

(9) The board shall adopt contested case rules that are consistent with the rules adopted by the attorney general under section 67-5206(4), Idaho Code, the provisions of this act and other statutory authority of the department.

(10) All rules, permits and other actions heretofore adopted, issued or taken by the board of health and welfare pertaining to the environmental protection functions administered by the division of environmental quality shall remain in full force and effect until superseded.

(11) The board of environmental quality shall be the successor to all rights, powers and duties of the board of health and welfare regarding all rulemaking proceedings, administrative proceedings, contested cases, civil actions, contracts, delegations, authority and other matters pertaining to environmental protection functions administered by the division of environmental quality.

(12) Upon creation of the board of environmental quality, all pending business before the board of health and welfare relating to environmental protection functions administered by the division of environmental quality shall be transferred to and determined by the board of environmental quality.

History:

[39-107, added 1972, ch. 347, sec. 7, p. 1017; am. 1974, ch. 23, sec. 51, p. 633; am. 1978, ch. 45, sec. 2, p. 82; am. 1980, ch. 34, sec. 1, p. 57; am. 1980, ch. 247, sec. 32, p. 604; am. 1980, ch. 325, sec. 2, p. 823; am. 1981, ch. 122, sec. 1, p. 209; am. 1993, ch. 216, sec. 23, p. 605; am. 2000, ch. 132, sec. 10, p. 325.]

39-107A. REAL PROPERTY IN BUNKER HILL CLEANUP SITE. Notwithstanding any other provision of law to the contrary, the department may accept transfer from the United States of any real property or interest in real property acquired by the United States for remediation purposes concerning any operable unit of the Bunker Hill Superfund Site pursuant to 42 U.S.C. section 9604(j). The state of Idaho shall incur no liability nor be subject to any claims related to the existence, release or threatened release of any hazardous substance or contaminant or pollutant on, or from, any such real property. The department may, in its sole discretion, manage, lease or dispose of such property for the purpose of facilitating appropriate operation and maintenance activities, encouraging economic development or assisting local governmental entities within the site. The management, lease or disposal of such property shall not be subject to chapter 3, title 58, Idaho Code. Any receipts from the management, lease or disposal of such property shall be deposited in the Bunker Hill Cleanup Trust Fund established by the Trust Fund Declaration of the state of Idaho dated May 2, 1994 (Attachment M, Consent Decree, United States of America v. Asarco, Inc. No. CV-94-0206-N-HLR (D. Idaho)) for the purpose of funding institutional control or operation and maintenance activities regarding the site.

History:

[(39-107A) 39-107a, added 1996, ch. 205, sec. 1, p. 630; am. 2000, ch. 21, sec. 1, p. 41; am. and redesig. 2000, ch. 132, sec. 11, p. 328; am. 2009, ch. 8, sec. 1, p. 10.]

39-107B. DEPARTMENT OF ENVIRONMENTAL QUALITY FUND. (1) There is hereby created a fund in the state treasury to be known as the department of environmental quality fund and all moneys deposited therein shall be available to be appropriated to the department of

environmental quality for purposes for which the department was established.

(2) All federal grants, fees for services, permitting fees, other program income and transfers from other funds subject to administration by the director of the department of environmental quality shall be placed in the fund provided that the statewide accounting and reporting system must provide for identification of the balance of each funding source within the fund.

(3) The state controller shall make transfers to the fund from the general fund and any other funds appropriated to the department of environmental quality as requested by the director of the department and approved by the board of examiners.

History:

[39-107B, added 2000, ch. 132, sec. 12, p. 328.]

39-107C. ENVIRONMENTAL PROTECTION TRUST FUND ESTABLISHED. The director of the department of environmental quality may receive on behalf of the department any moneys or real or personal property donated, bequeathed, devised or conditionally granted to the department. Moneys received directly or derived from the sale of such property shall be held in a trust known as the environmental protection trust, which is hereby established, reserved, set aside, appropriated and made available until expended and used and administered to carry out the terms and conditions of such donation, bequest, devise or grant and to pay the costs and expenses arising from investment of the trust. There is hereby created in the state treasury a fund to be known as the "environmental protection trust fund," which shall consist of moneys held in the environmental protection trust. Pending expenditure or use, surplus moneys in the environmental protection trust shall either be invested by the state treasurer in the manner provided for idle state moneys in the state treasury by section 67-1210, Idaho Code, or, in the alternative and with the concurrence of the director of the department, the state treasurer, and the endowment fund investment board, be invested with the endowment fund investment board pursuant to chapter 7, title 57, Idaho Code. Interest received on all such investments shall be paid into the environmental protection trust.

History:

[39-107C, added 2000, ch. 132, sec. 13, p. 328; am. 2016, ch. 130, sec. 1, p. 386.]

39-107D. RULES OF DEPARTMENT OR BOARD. (1) The legislature directs that any rule formulated and recommended by the department to the board which is broader in scope or more stringent than federal law or regulations, or proposes to regulate an activity not regulated by the federal government, is subject to the following additional requirements: the notice of proposed rulemaking and rulemaking record requirements under chapter 52, title 67, Idaho Code, must clearly specify that the proposed rule, or portions of the proposed rule, are broader in scope or more stringent than federal law or regulations, or regulate an activity not regulated by the federal government, and delineate which portions of the proposed rule are broader in scope or more stringent than federal law or regulations, or regulate an activity not regulated by the federal government.

(2) To the degree that a department action is based on science, in proposing any rule or portions of any rule subject

to this section, the department shall utilize:

(a) The best available peer reviewed science and supporting studies conducted in accordance with sound and objective scientific practices; and

(b) Data collected by accepted methods or best available methods if the reliability of the method and the nature of the decision justify use of the data.

(3) Any proposed rule subject to this section which proposes a standard necessary to protect human health and the environment shall also include in the rulemaking record requirements under chapter 52, title 67, Idaho Code, the following additional information:

(a) Identification of each population or receptor addressed by an estimate of public health effects or environmental effects; and

(b) Identification of the expected risk or central estimate of risk for the specific population or receptor; and

(c) Identification of each appropriate upper bound or lower bound estimate of risk; and

(d) Identification of each significant uncertainty identified in the process of the assessment of public health effects or environmental effects and any studies that would assist in resolving the uncertainty; and

(e) Identification of studies known to the department that support, are directly relevant to, or fail to support any estimate of public health effects or environmental effects and the methodology used to reconcile inconsistencies in the data.

(4) The department shall also include a summary of the information required by subsection (3) of this section in the notice of rulemaking required by chapter 52, title 67, Idaho Code.

(5) Any rule promulgated or adopted by the board which is broader in scope or more stringent than federal law or regulations, or which regulates an activity not regulated by the federal government, submitted to the standing committee of the legislature pursuant to section 67-5291, Idaho Code, shall include a notice by the board identifying the portions of the adopted rule that are broader in scope or more stringent than federal law or rules, or which regulate an activity not regulated by the federal government.

(6) Nothing provided herein is intended to alter the scope or effect of sections 39-105(3)(g)(v), 39-118B, 39-3601, 39-4404, 39-7210 and 39-7404, Idaho Code, or any other provision of state law which limits or prohibits agency action or rulemaking that is broader in scope or more stringent than federal law or regulations.

History:

[39-107D, added 2002, ch. 144, sec. 1, p. 405; am. 2003, ch. 259, sec. 1, p. 682; am. 2007, ch. 83, sec. 3, p. 225.]

39-108. INVESTIGATION — INSPECTION — RIGHT OF ENTRY — VIOLATION — ENFORCEMENT — PENALTY — INJUNCTIONS. (1) The director shall cause investigations to be made upon receipt of information concerning an alleged violation of this act or of any rule, permit or order promulgated thereunder, and may cause to be made such other investigations as the director shall deem advisable.

(2) For the purpose of enforcing any provision of this chapter or any rule authorized in this chapter, the director or the director's designee shall have the authority to:

(a) Conduct a program of continuing surveillance and of regular or periodic inspection of actual or potential environmental hazards, air contamination sources, water pollution sources and of solid waste disposal sites;

(b) Enter at all reasonable times upon any private or public property, upon presentation of appropriate credentials, for the purpose of inspecting or investigating to ascertain possible violations of this act or of rules, permits or orders adopted and promulgated by the director or the board;

(c) All inspections and investigations conducted under the authority of this chapter shall be performed in conformity with the prohibitions against unreasonable searches and seizures contained in the fourth amendment to the constitution of the United States and section 17, article I, of the constitution of the state of Idaho. The state shall not, under the authority granted by this chapter, conduct warrantless searches of private property in the absence of either consent from the property owner or occupier or exigent circumstances such as a public health or environmental emergency;

(d) Any district court in and for the county in which the subject property is located is authorized to issue a search warrant to the director upon a showing of (i) probable cause to suspect a violation, or (ii) the existence of a reasonable program of inspection. Any search warrant issued under the authority of this chapter shall be limited in scope to the specific purposes for which it is issued and shall state with specificity the manner and the scope of the search authorized.

(3) Whenever the director determines that any person is in violation of any provision of this act or any rule, permit or order issued or promulgated pursuant to this act, the director may commence either of the following:

(a) Administrative enforcement action.

(i) Notice. The director may commence an administrative enforcement action by issuing a written notice of violation. The notice of violation shall identify the alleged violation with specificity, shall specify each provision of the act, rule, regulation, permit or order which has been violated and shall state the amount of civil penalty claimed for each violation. The notice of violation shall inform the person to whom it is directed of an opportunity to confer with the director or the director's designee in a compliance conference concerning the alleged violation. A written response may be required within fifteen (15) days of receipt of the notice of violation by the person to whom it is directed.

(ii) Scheduling compliance conference. If a recipient of a notice of violation contacts the department within fifteen (15) days of the receipt of the notice, the recipient shall be entitled to a compliance conference. The conference shall be held within twenty (20) days of the date of receipt of the notice, unless a later date is agreed upon between the parties. If a compliance conference is not requested, the director may proceed with a civil enforcement action as provided in paragraph (b) of this subsection.

(iii) Compliance conference. The compliance conference shall

provide an opportunity for the recipient of a notice of violation to explain the circumstances of the alleged violation and, where appropriate, to present a proposal for remedying damage caused by the alleged violation and assuring future compliance.

(iv) Consent order. If the recipient and the director agree on a plan to remedy damage caused by the alleged violation and to assure future compliance, they may enter into a consent order formalizing their agreement. The consent order may include a provision providing for payment of any agreed civil penalty.

(v) Effect of consent order. A consent order shall be effective immediately upon signing by both parties and shall preclude any civil enforcement action for the same alleged violation. If a party does not comply with the terms of the consent order, the director may seek and obtain, in any appropriate district court, specific performance of the consent order and such other relief as authorized in this chapter.

(vi) Failure to reach consent order. If the parties cannot reach agreement on a consent order within sixty (60) days after the receipt of the notice of violation or if the recipient does not request a compliance conference as per paragraph (a)(ii) of this subsection, the director may commence and prosecute a civil enforcement action in district court, in accordance with paragraph (b) of this subsection.

(b) Civil enforcement action. The director may initiate a civil enforcement action through the attorney general as provided in section 39-109, Idaho Code. Civil enforcement actions shall be commenced and prosecuted in the district court in and for the county in which the alleged violation occurred and may be brought against any person who is alleged to have violated any provision of this act or any rule, permit or order which has become effective pursuant to this act. Such action may be brought to compel compliance with any provision of this act or with any rule, permit or order promulgated hereunder and for any relief or remedies authorized in this act. The director shall not be required to initiate or prosecute an administrative action before initiating a civil enforcement action.

(4) No civil or administrative proceeding may be brought to recover for a violation of any provision of this chapter or a violation of any rule, permit or order issued or promulgated pursuant to this chapter more than two (2) years after the director had knowledge or ought reasonably to have had knowledge of the violation.

(5) Monetary penalties.

(a) Any person determined in a civil enforcement action to have violated any provision of this act or any rule, permit or order promulgated pursuant to this act shall be liable for a civil penalty not to exceed the following amounts:

(i) For any violation of any provision of this act, rule, permit or order related to air quality: ten thousand dollars ($10,000) for each separate air violation and day of continuing air violation, whichever is greater;

(ii) For any violation of any provision of this act, rule, permit or order related to the Idaho national pollutant elimination system program: ten thousand dollars ($10,000) per violation or five thousand dollars ($5,000) for each day of a continuing violation, whichever is greater; or

(iii) For any violation of any provision of this act, rule, permit or order related to any other regulatory program authorized by this act: ten thousand dollars ($10,000) per violation or one thousand dollars ($1,000) for each day of a continuing violation, whichever is greater.

The method of recovery of said penalty shall be by a civil enforcement action in the district court in and for the county where the violation occurred. All civil penalties collected under this act shall be paid into the general fund of the state. Parties to an administrative enforcement action may agree to a civil penalty as provided in this subsection.

(b) The imposition or computation of monetary penalties may take into account the seriousness of the violation, good faith efforts to comply with the law, and an enforceable commitment by the person against whom the penalty is directed to implement a supplemental environmental project. For purposes of this section, "supplemental environmental project" means a project which the person is not otherwise required to perform and which prevents pollution, reduces the amount of pollutants reaching the environment, contributes to public awareness of environmental matters or enhances the quality of the environment. In evaluating a particular supplemental environmental project proposal, preference may be given to those projects with an environmental benefit that relate to the violation or the objectives of the underlying statute that was violated or that enhances the quality of the environment in the general geographic location where the violation occurred.

(6) In addition to such civil penalties, any person who has been determined to have violated the provisions of this act or the rules, permits or orders promulgated thereunder shall be liable for any expense incurred by the state in enforcing the act, or in enforcing or terminating any nuisance, source of environmental degradation, cause of sickness or health hazard.

(7) No action taken pursuant to the provisions of this act or of any other environmental protection law shall relieve any person from any civil action and damages that may exist for injury or damage resulting from any violation of this act or of the rules, permits and orders promulgated thereunder.

(8) In addition to, and notwithstanding other provisions of this act, in circumstances of emergency creating conditions of imminent and substantial danger to the public health or environment, the prosecuting attorney or the attorney general may institute a civil action for an immediate injunction to halt any discharge, emission or other activity in violation of provisions of this act or rules, permits and orders promulgated thereunder. In such action the court may issue an ex parte restraining order.

(9) In any administrative or civil enforcement proceeding for violation of any Idaho NPDES program rule, permit, requirement or order, the department shall comply with the public participation requirements set forth in 40 CFR 123.27(d)(2).

History:

[39-108, added 1972, ch. 347, sec. 8, p. 1017; am. 1974, ch. 23, sec. 52, p. 633; am. 1986, ch. 60, sec. 2, p. 170; am. 1993, ch. 275, sec. 5, p. 933; am. 1997, ch. 94, sec. 2, p. 221; am. 2000, ch. 132, sec. 16, p. 330; am. 2014, ch. 40, sec. 1, p. 92.]

39-109. COMMENCEMENT OF CIVIL ENFORCEMENT ACTIONS — CRIMINAL ACTIONS AUTHORIZED — DUTIES OF ATTORNEY GENERAL. Upon request of the

director, it shall be the duty of the attorney general to institute and prosecute civil enforcement actions or injunctive actions as provided in section 39-108, Idaho Code, and to prosecute actions or proceedings for the enforcement of any criminal provisions of this chapter. In addition, when deemed by the director to be necessary, the director may retain or employ private counsel. The attorney general may delegate the authority and duty under this section to prosecute criminal actions to the prosecuting attorney of the county in which such a criminal action may arise.
History:
[39-109, added 1986, ch. 60, sec. 4, p. 174; am. 2000, ch. 132, sec. 17, p. 333.]

39-110. REGISTRATION OF PERSONS ENGAGED IN OPERATIONS OR CONSTRUCTION WHERE AIR POLLUTION IS A FACTOR — REPORTS. The director may require the registration of persons engaged in operations which may result in air pollution, and of persons causing, permitting or allowing construction of any facility or new equipment capable of emitting air contaminants into the atmosphere, or designed to eliminate or reduce emissions into the atmosphere, and the filing of reports by them with the department relating to locations, size of outlet, height of outlet, rate and period of emission and composition of effluent, and such other information as the director shall prescribe relative to air pollution.
History:
[39-110, added 1972, ch. 347, sec. 10, p. 1017; am. 1986, ch. 60, sec. 5, p. 175; am. 2000, ch. 132, sec. 18, p. 333.]

39-111. AVAILABILITY OF RECORDS. Any records or other information furnished to the board, department or to agents, contractors, or other representatives of the department under any provisions of this chapter shall be subject to disclosure according to chapter 1, title 74, Idaho Code.
History:
[39-111, added 1972, ch. 347, sec. 11, p. 1017; am. 1974, ch. 23, sec. 54, p. 633; am. 1986, ch. 60, sec. 6, p. 175; am. 1990, ch. 213, sec. 34, p. 508; am. 1998, ch. 125, sec. 2, p. 464; am. 2000, ch. 132, sec. 19, p. 333; am. 2015, ch. 141, sec. 82, p. 439.]

39-112. EMERGENCY — ORDER — HEARING — MODIFICATION, AFFIRMANCE, OR SETTING ASIDE. (1) Any other provision of law to the contrary notwithstanding, if the director finds that a generalized condition of air pollution exists and that it creates an imminent and substantial endangerment to the public health or welfare constituting an emergency requiring immediate action to protect human health or safety, the director, with the concurrence of the governor as to the existence of such an emergency shall order persons causing or contributing to the air pollution to reduce or discontinue immediately the emission of air contaminants, and such order shall fix a time and place, not later than twenty-four (24) hours thereafter, for a hearing to be held before the director. Not more than twenty-four (24) hours after the commencement of such hearing, and without adjournment thereof, the director shall affirm, modify or set aside its order.

(2) In the absence of a generalized condition of air pollution of the type referred to in subsection (1) of this section, if the director finds that emissions from the operation of one (1) or more air contaminant sources is causing imminent and substantial danger to human health or safety the director may bring suit through the

attorney general in the appropriate district court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution. If it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of such civil action, the director may order the person or persons responsible for the operation or operations in question to reduce or discontinue emissions immediately without regard to other provisions of this act. In such event, the requirements for hearing and affirmance, modification or setting aside of an order set forth in subsection (1) of this section shall apply. For purposes of subsections (1) and (2) of this section, imminent and substantial endangerment or danger shall be interpreted no more broadly than these words are interpreted under section 303 of the clean air act, 42 USC 7603.

(3) Nothing in this section shall be construed to limit any power which the governor or any other officer may have to declare an emergency and act on the basis of such declaration, if such power is conferred by statute or constitutional provision, or inheres in the office.

History:

[39-112, added 1972, ch. 347, sec. 12, p. 1017; am. 2000, ch. 132, sec. 20, p. 334.]

39-113. TRANSFER OF EMPLOYEES. All employees of the division of environmental quality and the INEEL oversight program of the department of health and welfare are transferred to the department of environmental quality. Such transfer shall in no manner affect the rights or privileges of any transferred employee under the public employee retirement system (chapter 13, title 59, Idaho Code), the group insurance plan (chapter 12, title 59, Idaho Code), or personnel system (chapter 53, title 67, Idaho Code). Additionally, when the department of health and welfare is used in terms of environmental protection, it shall mean the department of environmental quality.

History:

[39-113, added 1972, ch. 347, sec. 15, p. 1017; am. 2000, ch. 132, sec. 21, p. 334.]

39-114. OPEN BURNING OF CROP RESIDUE. [EFFECTIVE UNTIL FEBRUARY 28, 2018] (1) The open burning of crop residue to develop physiological conditions conducive to increase crop yields, or to control diseases, insects, pests or weed infestations, shall be an allowable form of open burning, such that it is expressly authorized as referenced in section 52-108, Idaho Code, as long as the open burning is conducted in accordance with the provisions of this section and the rules promulgated pursuant to this chapter.

(2) Crop residue means any vegetative material remaining in the field after harvest or vegetative material produced on designated conservation reserve program (CRP) lands.

(3) The open burning of crop residue shall be conducted in the field where it was generated. A burn may not take place without preapproval from the department. The department shall not approve a burn if it determines that ambient air quality levels:

(a) Are exceeding, or are expected to exceed, seventy-five percent (75%) of the level of any national ambient air quality standard (NAAQS) on any day, provided however, for purposes of the ozone NAAQS, the 2008 standard of .075 parts per million, 73 federal register 16435, 16511 (March 27, 2008) shall apply, and these levels are projected to continue or recur over at least the

next twenty-four (24) hours; or

(b) Have reached, or are forecasted to reach and persist at, eighty percent (80%) of the one (1) hour action criteria for particulate matter pursuant to section 556 of IDAPA 58.01.01, rules for the control of air pollution in Idaho.

The department shall make available to the public, prior to the burn, information regarding the date of the burn, location, acreage and crop type to be burned. If the agricultural community desires to burn more than twenty thousand (20,000) acres annually of bluegrass within the state, that does not include Indian or tribal lands within the reservation boundaries as recognized by the federal clean air act, then, prior to approving the burning of the additional acres, the department shall complete an air quality review analysis to determine that the ambient air quality levels in this section will be met.

(4) A fee in an amount of two dollars ($2.00) per acre to be burned shall be paid to the department prior to burning. This fee shall not apply to propane flaming, as defined in the rules promulgated pursuant to this chapter. The department shall remit all fees quarterly to the state treasurer, who shall deposit the moneys in the general fund.

39-114. OPEN BURNING OF CROP RESIDUE. [EFFECTIVE FEBRUARY 28, 2018] (1) The open burning of crop residue to develop physiological conditions conducive to increase crop yields, or to control diseases, insects, pests or weed infestations, shall be an allowable form of open burning, such that it is expressly authorized as referenced in section 52-108, Idaho Code, as long as the open burning is conducted in accordance with the provisions of this section and the rules promulgated pursuant to this chapter.

(2) Crop residue means any vegetative material remaining in the field after harvest or vegetative material produced on designated conservation reserve program (CRP) lands.

(3) The open burning of crop residue shall be conducted in the field where it was generated. A burn may not take place without preapproval from the department. The department shall not approve a burn if it determines that ambient air quality levels:

(a) Are exceeding, or are expected to exceed, ninety percent (90%) of the ozone national ambient air quality standard (NAAQS) and seventy-five percent (75%) of the level of any other NAAQS on any day, and these levels are projected to continue or recur over at least the next twenty-four (24) hours; or

(b) Have reached, or are forecasted to reach and persist at, eighty percent (80%) of the one (1) hour action criteria for particulate matter pursuant to section 556 of IDAPA 58.01.01, rules for the control of air pollution in Idaho.

The department shall make available to the public, prior to the burn, information regarding the date of the burn, location, acreage and crop type to be burned. If the agricultural community desires to burn more than twenty thousand (20,000) acres annually of bluegrass within the state, that does not include Indian or tribal lands within the reservation boundaries as recognized by the federal clean air act, then, prior to approving the burning of the additional acres, the department shall complete an air quality review analysis to determine that the ambient air quality levels in this section will be met.

(4) A fee in an amount of two dollars ($2.00) per acre to be burned shall be paid to the department prior to burning. This fee shall not apply to propane flaming, as defined in the rules promulgated pursuant to this chapter. The department shall remit all fees quarterly to the state treasurer, who shall deposit the moneys in

the general fund.
History:
[39-114, added 2008, ch. 71, sec. 1, p. 186; am. 2011, ch. 51, sec. 1, p. 115; am. 2017, ch. 56, sec. 1, p. 86; added 2017, ch. 56, sec. 3, p. 87.]

39-115. POLLUTION SOURCE PERMITS.

(1) (a) The director shall have the authority to issue pollution source permits in compliance with rules established hereunder.

(b) To determine the applicability of permit requirements for any major or minor air pollution source in Idaho, the department shall develop and recommend to the board for adoption, rules that define "regulated air pollutant" as follows:

(i) For purposes of a major source permit to operate issued or modified by the department in accordance with title V of the federal clean air act amendments of 1990, "regulated air pollutant" shall have the same meaning as in title V of the federal clean air act amendments of 1990, and any applicable federal regulations promulgated pursuant to title V of the federal clean air act amendments of 1990;

(ii) For purposes of any other operating permit issued or modified by the department, the federal definition of "regulated air pollutant" as defined in subsection (1)(b)(i) of this section shall also apply;

(iii) For purposes of any permit to construct issued or modified by the department pursuant to part D of subchapter I of the federal clean air act, "regulated air pollutant" shall mean those air contaminants that are regulated pursuant to part D of subchapter I of the federal clean air act and applicable federal regulations promulgated pursuant to part D of subchapter I of the federal clean air act; and

(iv) For purposes of major source compliance with 42 U.S.C. section 7412(g) and (i)(1), "regulated air pollutant" shall mean those air contaminants that are listed pursuant to 42 U.S.C. section 7412(b); and

(v) For purposes of any other major or minor permit to construct issued or modified by the department, "regulated air pollutant" shall mean those air contaminants that are regulated pursuant to part C of subchapter I of the federal clean air act and any applicable federal regulations promulgated pursuant to part C of subchapter I of the federal clean air act.

(c) To determine the applicability of any permit to construct or permit to operate requirement to any air pollution source in Idaho, fugitive emissions shall not be included in any applicability calculation, unless required by 42 U.S.C. section 7401 et seq. or any implementing regulation promulgated thereunder. The director shall develop and the board shall adopt rules that provide that, for both major and minor source permit applicability determinations, fugitive emissions shall be included only as required by 42 U.S.C. section 7401 et seq. or any implementing regulation promulgated thereunder.

(d) The director shall develop and recommend to the board for adoption through rulemaking, criteria to determine insignificant activities and such sources or modification with emissions at or below the de minimis level which shall not require either a permit to construct or a permit to operate; provided however, that a registration of the activities or sources may be required.

(2) The director shall have the authority to sue in competent courts to enjoin any threatened or continuing:

(a) Violations of pollution source permits or conditions thereof without the necessity of a prior revocation of the permit; or

(b) Construction of an industrial or commercial air pollution source without a permit required under this chapter or rules adopted hereunder.

(3) The department is authorized to charge and collect a fee for processing applications for industrial or commercial air pollution source permits in accordance with a fee schedule established by the board pursuant to this chapter. For fees charged for operating permits under title V of the federal clean air act amendments of 1990, the department shall not charge a fee on any hazardous air pollutant other than those listed under section 112 of the federal clean air act. The fee schedule shall be structured to provide an incentive for emission reduction.

(4) The director may issue air emission source permits to construct a facility to incinerate any waste or waste item contaminated with polychlorinated biphenyls (PCBs) only if the director finds:

(a) The facility will not be sited in complex valley terrain where the valley floor is less than five (5) miles wide and the valley walls rise more than one thousand (1,000) feet;

(b) The facility has complied with local planning and zoning requirements;

(c) There has been an opportunity for public participation; and

(d) The facility will employ best available technology and instrumentation.

Subsection (4) of this section shall not apply to incineration activities existing on or before January 1, 1987.

History:

[39-115, as added by 1973, ch. 138, sec. 1, p. 269; am. 1974, ch. 23, sec. 56, p. 633; am. 1987, ch. 135, sec. 1, p. 269; am. 1987, ch. 198, sec. 2, p. 418; am. 1993, ch. 275, sec. 6, p. 936; am. 2000, ch. 132, sec. 23, p. 335; am. 2005, ch. 292, sec. 2, p. 929; am. 2005, ch. 324, sec. 1, p. 994.]

39-116. COMPLIANCE SCHEDULES. The director shall have the authority to issue compliance schedule orders to any person who is the source of any health hazard, air contaminant, water pollution or solid waste for which regulatory standards have been established, including regulatory standards then in effect or to become effective at a future date or at future successive dates. The purpose of any compliance schedule order shall be to identify and establish appropriate acts and time schedules for interim actions by those persons who are or who will be affected by regulatory standards, such acts and schedules being designed to assure timely compliance by those affected by the regulatory standards. Prior to the issuance of a compliance schedule order, the director shall solicit the cooperation of the person to whom the compliance schedule order will be directed by providing the person notice that identifies with reasonable specificity the applicable statutes and rules, the events or occurrences that necessitate the order, and the proposed terms of the order and that informs the person that a conference with the director to discuss the proposed terms of the order shall be provided if requested within fifteen (15) days of receipt of the notice. If requested, the director shall confer with the person and shall solicit the person’s cooperation in the selection of the terms of the order. The compliance

schedule order may be issued at any time after the conference, if one is requested, and the expiration of sixty (60) days following the receipt of the notice. Any compliance schedule order shall be enforceable in the same manner as any order entered pursuant to section 39-108, Idaho Code, except the order may be challenged by an administrative appeal to the board as provided in section 39-107(5), Idaho Code. The order shall be effective and enforceable during an administrative appeal, unless the board or its designated hearing officer issues a stay of the order.

History:

[I.C., sec. 39-116, as added by 1973, ch. 139, sec. 1, p. 270; am. 1974, ch. 23, sec. 57, p. 633; am. 1986, ch. 60, sec. 7, p. 175; am. 2000, ch. 132, sec. 24, p. 336.]

39-117. CRIMINAL VIOLATION — PENALTY. (1) Any person who willfully or negligently violates any of the provisions of the non-air quality public health or environmental protection laws or the terms of any lawful notice, order, permit, standard, rule or regulation issued pursuant thereto shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than ten thousand dollars ($10,000) for each separate violation or one thousand dollars ($1,000) per day for continuing violations, whichever is greater.

(2) Any person who knowingly violates any of the provisions of the air quality public health or environmental protection laws or the terms of any lawful notice, order, permit, standard or rule issued pursuant thereto shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than ten thousand dollars ($10,000) per day per violation. In addition, any person who knowingly releases into the ambient air any hazardous air pollutant listed pursuant to section 112 of the federal clean air act, 42 U.S.C. 7412, or any extremely hazardous substance listed pursuant to 42 U.S.C. 11002(a)(2) that is not listed under section 112, and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine of not more than two hundred fifty thousand dollars ($250,000) per day, or by imprisonment of not more than fifteen (15) years or both such fine and imprisonment. Any person committing such violation that is an organization shall, upon conviction under this subsection, be subject to a fine of not more than one million dollars ($1,000,000) for each violation. For any air pollutant for which the environmental protection agency or the board of environmental quality has set an emissions standard or for any source for which a permit has been issued under title V of the clean air act amendments of 1990, a release of such pollutant in accordance with that standard or permit shall not constitute a violation of the provisions of this subsection.

(3) Any person who willfully or negligently violates any Idaho national pollutant discharge elimination system (NPDES) standard or limitation, permit condition or filing requirement shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than ten thousand dollars ($10,000) per violation or for each day of a continuing violation. Any person who knowingly makes any false statement, representation or certification in any Idaho NPDES form, in any notice or report required by an NPDES permit, or who knowingly renders inaccurate any monitoring device or method required to be maintained shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five thousand dollars ($5,000) per violation or for each day of a continuing violation.

History:
[39-117, added 1973, ch. 137, sec. 1, p. 268; am. 1986, ch. 60, sec. 8, p. 176; am. 1993, ch. 275, sec. 7, p. 937; am. 1998, ch. 125, sec. 3, p. 464; am. 2014, ch. 40, sec. 2, p. 95.]

39-118. REVIEW OF PLANS. (1) Except as provided by subsection (2) of this section, all plans and specifications for the construction of new sewage systems, sewage treatment plants or systems, other waste treatment or disposal facilities, public water supply systems or public water treatment systems or for material modification or expansion to existing sewage treatment plants or systems, waste treatment or disposal facilities, public water supply systems or public water treatment systems, shall be submitted to and approved by the director before construction may begin, and all construction shall be in substantial compliance therewith. Material modifications are those that are intended to increase system capacity or to alter the methods or processes employed. The director shall review plans and specifications and endeavor to resolve design issues within forty-two (42) days of submittal such that approval can be granted. If the director and applicant have not resolved design issues within forty-two (42) days or at any time thereafter, the applicant may file a written demand to the director for a decision. Upon receipt of such written demand, the director shall deliver a written decision to the applicant within no more than seven (7) days explaining any reasons for disapproval. The director shall maintain records of all written demands for decision made pursuant to this subsection with such records including the final decision rendered and the timeliness thereof. No material deviation shall be made from the approved plans and specifications without the prior approval of the director.

(2) Plans meeting the following standards shall not require preconstruction approval by the director:

(a) Plans for dairy systems pursuant to section 37-401, Idaho Code.

(b) Plans developed to evidence compliance with storm water best management practices.

(c) Plans developed for routine maintenance or equipment replacement activities.

(d) Plans for sanitary sewer extensions, water main extensions, and storm drain extensions, when such facilities will be owned and operated by a city, county, quasi-municipal corporation or regulated public utility where such city, county, quasi-municipal corporation or regulated public utility provides for the review of such plans and specifications by a qualified licensed professional engineer to verify compliance with facility standards and approves construction plans prior to initiation of construction. Any plans approved pursuant to this subsection shall be transmitted to the director at the time construction is authorized along with a statement that the plans comply with the facility standards and that construction has been authorized by the public agency or public utility. At the discretion of any city, county, quasi-municipal corporation or regulated public utility, the plans addressed by this subsection may be referred to the director for review and approval prior to initiation of construction.

(3) Within thirty (30) days of the completion of construction of facilities for which plans are required to be reviewed pursuant to subsection (1) or subsection (2)(d) of this section, record plans and specifications based on information provided by the construction contractor and field observations made by the engineer or the

engineer’s designee depicting the actual construction of facilities performed must be submitted to the director by the engineer representing the public agency or regulated public utility, if the resultant facilities will be owned and operated by a public agency or regulated public utility, or by the design engineer or owner-designated substitute engineer if the constructed facilities will not be owned and operated by a public agency or regulated public utility. Such submittal by the professional engineer must confirm material compliance with the approved plans or disclose any material deviations therefrom. If construction does not materially deviate from the original plans and specifications previously provided to the department, the owner may have a statement to that effect prepared by a licensed professional engineer and filed with the department in lieu of submitting a complete and accurate set of record drawings.

(4) All plans and specifications submitted to satisfy the requirements of subsection (1) of this section and all plans approved pursuant to subsection (2)(d) of this section shall be in compliance with applicable facility and design standards and conform in style and quality to regularly accepted engineering standards. The department shall review plans to determine compliance with applicable facility standards and engineering standards of care. As long as the plans and specifications comply with applicable facility and design standards, the department shall not substitute its judgment for that of the owner’s design engineer concerning the manner of compliance with design standards. Except with respect to plans and specifications for facilities addressed in subsection (5) of this section, and confined animal feeding operations, the board may require that certain types of plans and specifications must be stamped by registered professional engineers. If the director determines that any particular facility or category of facilities will produce no significant impact on the environment or on the public health, the director shall be authorized to waive the submittal or approval requirement for that facility or category of facilities.

(5) All plans and specifications for the construction, modification, expansion, or alteration of waste treatment or disposal facilities for aquaculture facilities licensed by the department of agriculture for both commercial fish propagation facilities as defined in section 22-4601, Idaho Code, and sport fish propagation facilities whether private or operated or licensed by the department of fish and game and other aquaculture facilities as defined in the Idaho waste management guidelines for aquaculture operations, shall be submitted to and approved by the director of the department of environmental quality before construction may begin and all construction shall be in compliance therewith. The director shall review plans and specifications within forty-five (45) days of submittal and notify the owner or responsible party of approval or disapproval. In the event of disapproval the director shall provide reasons for disapproval in writing to the owner or responsible party. Plans and specifications shall conform in style and quality to standard industry practices and guidelines developed pursuant to this subsection. The director shall establish industry guidelines or best management practices subcommittees composed of members of the department, specific regulatory agencies for the industry, general public, and persons involved in the industry to develop and update guidelines or best management practices as needed. Within thirty (30) days of the completion of the construction, modification, expansion or alteration of facilities subject to this subsection, the owner or responsible party shall submit a statement to the director that the construction

has been completed and is in substantial compliance with the plans and specifications as submitted and approved. The director shall conduct an inspection within sixty (60) days of the date of submission of the statement and shall inform the owner or responsible party of its approval of the construction or in the event of nonapproval, the reasons for nonapproval.

History:

[39-118, as added by 1973, ch. 136, sec. 1, p. 267; am. 1974, ch. 23, sec. 58, p. 633; am. 1976, ch. 116, sec. 1, p. 453; am. 1986, ch. 60, sec. 9, p. 176; am. 1994, ch. 290, sec. 1, p. 910; am. 1996, ch. 80, sec. 1, p. 263; am. 2000, ch. 132, sec. 25, p. 336; am. 2005, ch. 321, sec. 1, p. 988.]

39-118A. ORE PROCESSING BY CYANIDATION. (1) All plans and specifications for the construction of a cyanidation facility shall be submitted to and approved by the department before construction may begin, and all construction shall be in compliance therewith. Within thirty (30) days of the completion of such construction, modification or expansion, complete and accurate plans and specifications depicting that actual construction, modification or expansion does not deviate from the original approved plans and specifications, shall be submitted to the department. All plans and specifications submitted to satisfy the requirements of this section shall be certified by registered professional engineers.

(2) (a) A cyanidation facility shall not be constructed, operated, or closed prior to a permit being obtained from the department.

(b) Weather permitting, the director shall deliver to the operator within one hundred eighty (180) days after the receipt of a complete permit application the notice of rejection or notice of approval of the permit, as the case may be, provided however, that, subject to the provisions of subsection (3) of this section, if the director fails to deliver a notice of approval or notice of rejection within the time period, the permit submitted shall be deemed to comply with this chapter, and the operator may commence to build, operate or close the cyanidation facility covered by the permit, as the case may be, as if a notice of approval of the permit had been received from the director. Provided however, that if weather conditions prevent the director from inspecting the cyanidation facility to obtain information needed to approve or reject a submitted permit, he may, in writing to the operator, extend the time not to exceed thirty (30) days after weather conditions permit such inspection.

(c) The director may require a reasonable fee for processing permit applications.

(3) (a) Prior to the effective date of rules promulgated under chapter 15, title 47, Idaho Code, the department is authorized to issue a permit under subsection (2) of this section if the cyanidation facility has provided financial assurance under the provisions of IDAPA 58.01.13 in an amount determined by the department to be the estimated reasonable costs to complete the activities specified in the permanent closure plan required in IDAPA 58.01.13, in the event of the failure of an operator to complete those activities, plus ten percent (10%) of such costs. In setting the amount of financial assurance, the department shall avoid duplication with any financial assurance, bonds and sureties deposited with other governmental agencies.

(b) After the effective date of rules promulgated under chapter

15, title 47, Idaho Code, the department shall not issue a permit under subsection (2) of this section unless the cyanidation facility has satisfied the financial assurance requirements of chapter 15, title 47, Idaho Code, relating to ore processing by cyanidation.

(4) A cyanidation facility with an existing permit approved by the department prior to July 1, 2005, shall be subject to the applicable laws and rules for ore processing by cyanidation in effect on June 30, 2005. If there is a material modification or a material expansion of a cyanidation facility after June 30, 2005, all provisions of this chapter shall apply to the modification or expansion; provided however, that reclamation or closure related activities at a facility with an existing cyanidation permit approved by the department that did not actively add cyanide after January 1, 2005, shall not be considered to be material modifications or a material expansion of the facility.

(5) The department shall promulgate temporary rules by August 1, 2005, to implement the provisions of this act; however, no rulemaking is necessary, nor shall be required, to increase the amount of financial assurance provided by the department's interim authority under subsection (3)(a) of this section.

History:

[39-118A, added 1987, ch. 356, sec. 1, p. 789; am. 2005, ch. 167, sec. 2, p. 510.]

39-118B. RELATIONSHIP TO FEDERAL LAW. The board may promulgate rules and regulations to ensure that the state of Idaho is in compliance with the provisions of the federal clean air act. To the extent that the federal clean air act sets forth or the United States environmental protection agency adopts or has adopted a specific standard, emission limitation or control technology requirement under the clean air act, a more stringent standard, emission limitation or control technology requirement promulgated by the board shall not become effective until specifically approved by statute.

History:

[39-118B, added 1993, ch. 275, sec. 1, p. 927.]

39-118C. LEGISLATIVE FINDINGS AND DECLARATION OF PURPOSE. (1) The legislature finds that it is an obligation of the state of Idaho under title V of the clean air act to provide for an operating permit program for sources of air pollution within the state.

(2) The purpose of these amendments to the environmental protection and health act is to meet the state's obligation to protect air quality with a cost-effective operating permit program.

(3) The legislature intends that the department's regulation under title V of the clean air act shall take advantage of the flexibility authorized by the federal clean air act to establish reasonable and cost-effective requirements. Such requirements shall include, but not be limited to:

(a) Operating flexibility provisions;

(b) Provisions allowing off-permit changes;

(c) Provisions that limit federally enforceable hazardous air pollutant requirements to that group of pollutants listed under section 112 of the federal clean air act (to the extent that the operating permits address hazardous air pollutants);

(d) Provisions for operating permits to be issued for fixed terms of five (5) years; provided that, in order to facilitate the implementation of the title V operating permit program, the

director may issue operating permits with terms of from three (3) to five (5) years during the first three (3) years following environmental protection agency approval of Idaho's title V operating permit program so long as those permits with fixed terms of less than five (5) years are renewed with terms of five (5) years thereafter; and provided further that if the maximum operating permit term under the federal clean air act should be extended beyond five (5) years, the director shall similarly extend the term of operating permits issued under the Idaho program; and provided further, that shorter terms are allowable when mutually agreed upon by the department and the applicant;

(e) Provisions for adequate, streamlined and reasonable procedures for processing modifications, including establishing criteria to determine insignificant changes that shall not require a permit modification, and establishing classes of modifications based on significance which shall include a minor modification class for which modifications may be processed in group as authorized by 40 CFR 70.7(e)(3) as may be amended; and

(f) Provisions allowing an existing source to make changes that reduce emissions without applying for a permit to construct or an amendment to an operating permit; provided, however, that an existing source that makes such changes may seek and obtain an operating permit modification if it chooses.

History:

[39-118C, added 1993, ch. 275, sec. 2, p. 927.]

39-118D. IDAHO AIR QUALITY PERMITTING FUND. (1) All moneys received from fees collected from the pollution sources requiring permitting under title V of the federal clean air act amendments of 1990 shall be forwarded to the department of environmental quality and shall be paid into the Idaho air quality permitting fund which is hereby created in the office of the state treasurer.

(2) Such moneys and all interest earned thereon shall be kept in the Idaho air quality permitting fund and shall be expended for the technical, legal and administrative support necessary for implementing the operating permit program required under title V of the federal clean air act amendments of 1990.

(3) All salaries, costs and expenses incurred by the department of environmental quality in performing the duties and the exercise of its powers in carrying out the operating permit program required under title V of the federal clean air act amendments of 1990 shall be paid out of the air quality permitting fund.

History:

[39-118D, added 1993, ch. 275, sec. 3, p. 928; am. 2000, ch. 132, sec. 26, p. 337.]

39-118E. SMALL BUSINESS ASSISTANCE. The department shall implement a small business assistance program as required in 42 U.S.C. 7661A.

History:

[39-118E, added 1993, ch. 275, sec. 8, p. 937.]

39-119. COLLECTION OF FEES FOR SERVICES. The department of environmental quality is hereby authorized to charge and collect reasonable fees, established by standards formulated by the director and approved by the board through rulemaking, for any service rendered by the department.

History:

[I.C., sec. 39-119, as added by 1975, ch. 182, sec. 1, p. 499; am. 2000, ch. 132, sec. 27, p. 338.]

39-120. DEPARTMENT OF ENVIRONMENTAL QUALITY PRIMARY ADMINISTRATIVE AGENCY — AGENCY RESPONSIBILITIES. (1) The department of environmental quality is designated as the primary agency to coordinate and administer ground water quality protection programs for the state.

(2) Recognizing that the department of water resources has the responsibility to maintain the natural resource geographic information system for the state and is the collector of baseline data for the state's water resources, that the department of environmental quality has the responsibility for collecting and monitoring data for water quality management purposes and that the department of agriculture is responsible for regulating the use of pesticides and fertilizers and for licensing applicators, the department of environmental quality, the department of water resources and the department of agriculture shall:

(a) Develop a ground water monitoring plan, concurrently with the development of a ground water quality plan, for development and administration of a comprehensive ground water quality monitoring network, including point of use, point of contamination and problem assessment monitoring sites across the state and the assessment of ambient ground water quality utilizing, to the greatest degree possible, collection and coordination of existing data sources.

(b) Establish a system or systems within state departments and political subdivisions of the state for collecting, evaluating and disseminating ground water quality data and information.

(c) Develop and maintain a natural resource geographic information system and comprehensive water resource data system. The system shall be accessible to the public.

(3) The responsible state departments or boards should adopt rules which specify the general standards for determining actions necessary to prevent ground water contamination and cleanup actions necessary to meet the goals of the state.

(4) The director of the department of environmental quality may develop and recommend for approval by the board through rulemaking, ambient ground water quality standards for contaminants for which the administrator of the United States environmental protection agency has established drinking water maximum contaminant levels. The director may develop and recommend for approval by the board, through rulemaking, ground water quality standards for contaminants for which the administrator of the United States environmental protection agency has not established drinking water maximum contaminant levels. However, the existence of such standards, or the lack of them, should not be construed or utilized in derogation of the ground water quality protection goal and protection policies of the state.

(5) The departments of environmental quality, water resources and agriculture should take actions necessary to promote and assure public confidence and public awareness of ground water quality protection. In pursuing this goal, the departments and public health districts should make public the results of investigations concerning ground water quality subject to the restrictions contained in section 39-111, Idaho Code.

History:

[39-120, added 1989, ch. 421, sec. 2, p. 1028; am. 1990, ch. 151, sec. 1, p. 334; am. 2000, ch. 132, sec. 28, p. 338.]

39-121. DEFINITIONS. As used in section 39-102, Idaho Code, and in sections 39-120 through 39-127, Idaho Code:

(1) "Cleanup" means removal, treatment or isolation of a contaminant from ground water through the directed efforts of humans or the removal or treatment of a contaminant in ground water through management practice or the construction of barriers, trenches and other similar facilities for prevention of contamination, as well as the use of natural processes such as ground water recharge, natural decay and chemical or biological decomposition.

(2) "Contaminant" means any chemical, ion, radionuclide, synthetic organic compound, microorganism, waste or other substance which does not occur naturally in ground water or which naturally occurs at a lower concentration.

(3) "Contamination" means the direct or indirect introduction into ground water of any contaminant caused in whole or in part by human activities.

(4) "Ground water" means any water of the state which occurs beneath the surface of the earth in a saturated geological formation of rock or soil.

(5) "Ground water quality plan" or "ground water quality protection plan" means the Idaho ground water quality plan adopted by the legislature in section 1, chapter 310, laws of 1992, and in section 1, chapter 273, laws of 1995.

History:

[39-121, added 1989, ch. 421, sec. 2, p. 1029; am. 2000, ch. 132, sec. 29, p. 339.]

39-126. DUTIES OF STATE AND LOCAL UNITS OF GOVERNMENT. (1) All state agencies shall incorporate the adopted ground water quality protection plan in the administration of their programs and shall have such additional authority to promulgate rules to protect ground water quality as necessary to administer such programs which shall be in conformity with the ground water quality protection plan. Cities, counties and other political subdivisions of the state shall incorporate the ground water quality protection plan in their programs and are also authorized and encouraged to implement ground water quality protection policies within their respective jurisdictions, provided that the implementation is consistent with and not preempted by the laws of the state, the ground water quality protection plan and any rules promulgated thereunder. All state agencies, cities, counties and other political subdivisions shall cooperate with the department of environmental quality, the department of agriculture and the department of water resources in disseminating public information and education materials concerning the use and protection of ground water quality, in collecting ground water quality management data, and in conducting research on technologies to prevent or remedy contamination of ground water.

(2) Notwithstanding any other provision of law to the contrary, except as provided in subsection (3) of this section, whenever a state agency, city, county or other political subdivision of the state issues a permit or license which deals with the environment, the entity issuing the permit or license shall take into account the effect the permitted or licensed activity will have on the ground water quality of the state and it may attach conditions to the permit or license in order to mitigate potential or actual adverse effects from the permitted or licensed activity on the ground water quality of the state. Nothing contained in this section shall authorize a state

agency, city, county or other political subdivision of the state to issue or require a permit or license which it is not otherwise allowed by law to issue or require.

(3) Except as otherwise provided by the ground water quality protection plan, if a permit or license which deals with the environment is required to be obtained from a state agency and that agency considers the effect of the permitted or licensed activity on ground water quality, after notice to other units of government which may otherwise have regulatory authority over the activity which is the subject of the permit or license, a city, county or other political subdivision of the state shall not prohibit, limit or otherwise condition the rights of the permittee or licensee under the permit or license on account of the effect the permitted or licensed activity may have on ground water quality.

Nothing contained in this section shall be deemed to permit cities, counties or other political subdivisions of the state to regulate ground water quality with respect to any activity for which another statute or other statutes may have expressly or impliedly preempted such local ground water quality regulation.

History:

[39-126, added 1989, ch. 421, sec. 2, p. 1032; am. 2000, ch. 132, sec. 31, p. 340.]

39-127. APPLICATION OF FERTILIZERS AND PESTICIDES. No person shall be liable for ground water contamination resulting from the application of fertilizers or pesticides if the person applies a fertilizer according to generally accepted agronomic practices, or applies a pesticide product registered under the federal insecticide, fungicide, rodenticide act according to label requirements, including precautionary statements, of the U.S. environmental protection agency, and such application of the pesticide or fertilizer is otherwise done with the proper equipment required by law, is without negligence and is in accordance with state laws.

History:

[39-127, added 1989, ch. 421, sec. 2, p. 1033.]

39-128. APPLICABILITY — PROMULGATION OF RULES — ESTABLISHMENT OF ZONES — COMBUSTOR CHARGING COMPOSITION AND RECORDKEEPING — REPORT TO LOCAL GOVERNMENT — PERMIT PROCESSING. 1. Except as provided in subsection 2 of this section, the provisions of this section shall apply to medical waste combustors with a maximum rated capacity equal to or greater than three (3) tons per day. All combustors located on one (1) or more contiguous or adjacent properties and owned or operated by the same person or persons under common control shall be considered in determining the maximum rated capacity of a combustor.

2. The department is hereby directed to develop and propose, and the board is hereby directed to adopt, rules and regulations controlling emissions of air contaminants from all medical waste combustors, and implementing the provisions of this section except the provisions of subsections 8 and 9.

3. The following zones are hereby established:

a. Zone 1, consisting of the counties of Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce and Shoshone.

b. Zone 2, consisting of the counties of Ada, Adams, Boise, Canyon, Elmore, Gem, Owyhee, Payette, Valley and Washington.

c. Zone 3, consisting of the counties of Bannock, Bear Lake, Bingham, Blaine, Bonneville, Butte, Camas, Caribou, Cassia, Clark, Custer, Franklin, Fremont, Gooding, Jefferson, Jerome, Lemhi, Lincoln, Madison, Minidoka, Oneida, Power, Teton and Twin Falls.

4. Any county may petition the director to become incorporated into an adjacent zone. The director shall grant the petition provided it does not conflict with the purposes of this act, or any rule, regulation, permit or order issued or promulgated pursuant to this act.

5. For any combustor constructed or modified after the date of enactment of this section, no less than seventy per cent (70%) of the weight of the material charged into the combustor on an annual basis shall be material generated inside the zone in which the combustor is located.

6. An owner or operator of a combustor constructed and operated prior to the date of enactment of this section shall, by October 1, 1992, notify the department in writing describing the type, location and maximum rated capacity of the combustor.

7. Any person who owns or operates a combustor shall keep records as to the source, weight and type of material charged, and whether the material was generated within or outside the zone in which the combustor is located. These records shall be maintained for a period of not less than five (5) years and shall be made available to the department upon request. The requirements of this subsection may be fully or partially waived by the director if the owner or operator certifies to the department that no material generated outside the zone shall be charged into the combustor.

8. Any person proposing to construct or modify a combustor shall provide, in writing, to the local government a comprehensive report which shall include:

a. An overall description of the project;

b. The amount, type and disposal method of all solid waste produced;

c. The amount and content of any liquid to be discharged into the sewer system, applied to the land, or discharged into an impoundment or pond;

d. The amount, type and control of air emissions;

e. The effect of the facility on vehicular traffic;

f. The amount of noise produced by the facility;

g. The extent and control of odors from the facility; and

h. Any additional information requested, in writing, by the local government pertaining to the effect of the proposed facility upon the community or local resources.

9. The local government shall conduct at least one (1) public hearing regarding any proposal to construct or modify a combustor within the jurisdiction of the local government at which interested persons shall have an opportunity to be heard. At least fifteen (15) days prior to the hearing, notice of the time and place of the hearing, a brief summary of the proposal, and the location of the comprehensive report required by the provisions of subsection 8 of this section, shall be published in a newspaper of general circulation within the jurisdiction of the local government. The local government shall, after hearing, notify in writing the person proposing to construct or modify the combustor that the proposal conforms or does not conform to applicable planning and zoning ordinances. Reasonable

conditions may be placed on any approval so as to ensure that construction or modification of the combustor is in conformance with local planning and zoning ordinances and that all necessary local, state and federal permits are obtained.

10. Any person applying to the department for a permit to construct or modify a combustor shall submit, as part of the application, the notification required in subsection 8 of this section indicating that the proposal conforms, or conforms with conditions, to local government planning and zoning ordinances. Any application received by the department which does not include such a notification of approval or conditional approval shall be incomplete.

11. The director shall have authority to sue in competent courts to enjoin any threatened or continuing violation of the provisions of this section, or any rule, regulation, permit or order issued or promulgated to implement the provisions of this section. The court shall grant injunctive relief upon a showing that a violation of the provisions of this section or any rule, regulation, permit or order implementing the provisions of this section has occurred and is reasonably likely to continue.

12. The director shall have the authority to declare that an emergency exists and that a combustor may receive a waiver to combust material generated outside the zone in which the combustor is located in excess of the amount specified in subsection 5 of this section, provided the director finds that such an action is necessary to protect human health and the environment. The waiver shall not extend beyond six (6) months for any single combustor and eighteen (18) months in total duration.

13. For purposes of this section only:

a. The term "combustor" means a medical waste combustor as defined in section 39-103, Idaho Code.

b. The term "local government" means the city government for the city in which the combustor is to be located or, if the combustor is to be located outside the limits of an incorporated city, the county government for the county in which the combustor is to be located.

History:

[39-128, added 1992, ch. 189, sec. 2, p. 589.]

39-129. APPLICABILITY — DEFINITION OF LOCAL GOVERNMENT AND MANDATES — AUTHORIZATION FOR LOCAL GOVERNMENT AGREEMENTS — ADOPTION OF RULES — ESTABLISHMENT OF SCHEDULES — PRIORITY OF CONSIDERATIONS — REPORT AND RECOMMENDATIONS. (1) The provisions of this section shall apply to local governments providing drinking water, municipal waste disposal, municipal sewage or waste water disposal or treatment, or air pollution abatement, which can demonstrate to the satisfaction of the department that increasing and cumulative regulatory requirements applicable to such services cannot be met in a timely and reasonable manner. The provisions of the section do not apply where prohibited by federal or state laws or regulations for the protection of human health and the environment.

(2) For purposes of this section the term "local government" means the government of a county or incorporated city, and the term "federal mandates" means those requirements arising from federal statutes or subsequent regulations administered by the United States environmental protection agency.

(3) The department is hereby authorized to enter into agreements with local governments. The agreement may include a binding schedule enforceable under this chapter for the improvement, modification,

construction, or other actions, necessary in order for the local government to come into compliance as expeditiously as practicable with human health and environmental protection statutes and rules stemming from federal mandates.

(4) The department may propose, and the board adopt, rules necessary for the implementation of this section.

(5) In establishing any local government agreement schedule, the term of the agreement shall not exceed fifteen (15) years, although successive agreements may be entered into. All agreements must be signed by the director or his designee and the mayor of the city or county commissioners of the county, as appropriate. All agreements are enforceable as orders under the provisions of this chapter.

(6) Agreements and schedules entered into under this act shall take into account, in descending priority the:

(a) Protection of public health;

(b) Protection of the environment;

(c) Current tax structure and rates as compared to other local governments;

(d) Ability of the local government to pay for costs of compliance;

(e) Current fiscal obligations of the local government;

(f) Other factors as determined by the department or the board.

History:

[39-129, added 1994, ch. 162, sec. 2, p. 370; am. 2000, ch. 132, sec. 32, p. 341.]

39-130. REMOVAL — REMEDIATION — BUNKER HILL MINING AND METALLURGICAL COMPLEX SUPERFUND FACILITY. Notwithstanding any other provision of law to the contrary, removal and remediation actions in or related to any operable unit of the Bunker Hill mining and metallurgical complex superfund facility performed by or on behalf of the department of environmental quality shall not constitute public works pursuant to chapter 57, title 67, Idaho Code, chapter 19, title 54, Idaho Code, or any other provision of Idaho Code. In the letting and oversight of contracts for such removal or remediation actions, bonding of contractors may be required. The administrator of the division of waste management and remediation, department of environmental quality, and the director of the department of environmental quality, shall have the authority of the administrator of the division of purchasing, department of administration, and the director of the department of administration, respectively, in requiring open competitive bidding pursuant to chapter 92, title 67, Idaho Code, and any relevant rules of the department of administration.

History:

[39-130, added 2007, ch. 123, sec. 1, p. 373; am. 2016, ch. 289, sec. 11, p. 812.]

39-171. LEGISLATIVE FINDINGS AND PURPOSE. The legislature of the state of Idaho finds that:

(1) Wood and mill yard debris is a byproduct of wood processing and manufacturing; and

(2) If properly managed, wood and mill yard debris can be put to uses that have economic and environmental benefits; and

(3) There is a need for guidance about how to manage, store, use or dispose of wood and mill yard debris so that nuisance and adverse environmental impacts are minimized; and

(4) This guidance will enable the department and local units of

government to more effectively regulate the use or disposal of wood and mill yard debris.

The purpose of sections 39-171 through 39-174, Idaho Code, is to provide guidance for the sound use, storage, management and disposal of wood and mill yard debris by requiring the director of the department of environmental quality to appoint a committee to study the issues and to gather and disseminate information to persons and entities that deal with wood and mill yard debris.

History:

[(39-171) 39-166, added 1996, ch. 204, sec. 1, p. 628; amended & redesig. 2001, ch. 103, sec. 15, p. 266.]

39-172. DEFINITIONS. For purposes of sections 39-171 through 39-174, Idaho Code:

(1) "Committee" means the wood and mill yard debris committee.

(2) "Director" means the director of the Idaho department of environmental quality.

(3) "Wood or mill yard debris" means solid wood, bark, or wood fiber generated from the process of manufacturing wood products that may include components of soil, rock, or moisture, and for which the use, management, storage or final disposition is approved pursuant to sections 39-171 through 39-174, Idaho Code.

History:

[(39-172) 39-167, added 1996, ch. 204, sec. 2, p. 628; amended & redesig. 2001, ch. 103, sec. 16, p. 267.]

39-173. COMMITTEE — MEMBERS — TERMS. As needed, to fulfill the duties described in section 39-174, Idaho Code, the director may appoint a committee that consists of seven (7) individuals and includes:

(1) One (1) representative of the department of environmental quality, who will provide administrative and other support to the committee.

(2) Two (2) representatives of the public health districts which have mill yard or wood debris within their districts.

(3) Two (2) representatives from industries generating wood or mill yard debris.

(4) Two (2) members with demonstrated technical knowledge important to the work of the committee.

Committee members shall be appointed to serve three (3) year terms. No member may serve more than two (2) full terms. Members serve at the pleasure of the director.

Members of the committee shall serve without compensation pursuant to section 59-509(a), Idaho Code.

History:

[(39-173) 39-168, added 1996, ch. 204, sec. 3, p. 628; amended & redesig. 2001, ch. 103, sec. 17, p. 267; am. 2013, ch. 16, sec. 1, p. 26.]

39-174. COMMITTEE DUTIES — MEETINGS. The committee's duties shall include:

(1) Developing a manual providing guidance for the use, storage, management and disposal of wood or mill yard debris to prevent public nuisances and minimize or prevent harmful environmental impacts. Guidance provided by the manual may be incorporated or adopted by reference in the rules of the department or other appropriate state agencies.

(2) Considering and developing specific solutions to unforeseen

wood or mill yard debris use, storage, management or disposal as needed.

(3) Developing and sharing knowledge related to the use, storage, management and disposal of wood or mill yard debris including ways to constructively use or reclaim the debris.

(4) Making recommendations for any necessary permits, rules or legislation related to the use, storage, management or disposal of wood or mill yard debris.

The committee shall meet on an as needed basis to implement the purpose of sections 39-171 through 39-174, Idaho Code. A committee member or member of the public may request a meeting by sending a written request to the department describing the reason for the meeting, or the department may schedule a meeting at the discretion of the director. Upon receiving the request, the department shall contact all committee members and arrange a time and place most convenient to the majority of the members. Meetings may be conducted using telephonic devices or other methods that allow adequate communication among members.

History:

[(39-174) 39-169, added 1996, ch. 204, sec. 4, p. 629; amended & redesig. 2001, ch. 103, sec. 18, p. 267; am. 2013, ch. 16, sec. 2, p. 27.]

39-175A. LEGISLATIVE FINDINGS AND PURPOSES. (1) The legislature finds:

(a) That navigable waters within the state are one of the state's most valuable natural resources;

(b) That it is in the public interest to promote effective and efficient regulation of the discharge of pollutants into navigable waters, and that the state should control such permitting decisions as authorized under the federal clean water act;

(c) That the clean water act allows a state to develop and implement, with approval from the United States environmental protection agency, a national pollutant discharge elimination system (NPDES) program to be administered by the state;

(d) That the clean water act, as amended, and regulations adopted pursuant thereto, establishes complex and detailed provisions for regulation of those who discharge pollutants into navigable waters;

(e) That a state program to implement permitting decisions as authorized in the clean water act, and regulations adopted pursuant thereto, may enable the state to issue flexible permits consistent with the clean water act and avoid the existence of duplicative, overlapping or conflicting state and federal regulatory and enforcement processes;

(f) That a state program must be run with a minimum of federal interference in permitting, inspection and enforcement activities and that all state permitting actions under the approved state program are to be state actions and are not subject to consultation under the endangered species act or analysis under the provisions of the national environmental policy act. There should be no conditions of approval of the state program that have the effect of undermining or circumventing these principles;

(g) That the decision to accept delegation of authority from the environmental protection agency to operate an NPDES program has significant public policy implications that should be made by the legislature.

(2) Therefore, it is the intent of the legislature to establish

requirements that must be satisfied prior to legislative approval of a permitting program that complies with the clean water act and incorporates flexible permitting procedures and rules to be promulgated by the board.
History:
[39-175A, added 2005, ch. 57, sec. 1, p. 211; am. 2014, ch. 40, sec. 3, p. 96.]

39-175B. RELATIONSHIP BETWEEN STATE AND FEDERAL LAW. The legislature cannot conveniently or advantageously set forth in this chapter all the requirements of all of the regulations which have been or will be established under the clean water act. However, any state permitting program must avoid the existence of duplicative, overlapping or conflicting state and federal regulatory systems. Further, the board may promulgate rules to implement a state permitting program but such rules shall not impose conditions or requirements more stringent or broader in scope than the clean water act and regulations adopted pursuant thereto. Further, the department will not require NPDES permits for activities and sources not required to have permits by the United States environmental protection agency.
History:
[39-175B, added 2005, ch. 57, sec. 1, p. 212.]

39-175C. APPROVAL OF STATE NPDES PROGRAM. (1) The department is authorized to pursue approval of an NPDES program consistent with the requirements of this section. The department shall submit a complete application consistent with the requirements of the clean water act and 40 CFR 123 to the environmental protection agency to obtain approval for a state NPDES program by September 1, 2016.

(2) The board is authorized to proceed with negotiated rulemaking and all other actions that may eventually be necessary to obtain approval of a state NPDES program by the United States environmental protection agency including rules authorizing the collection of reasonable fees for processing and implementing an NPDES permit program. Such fees shall not be assessed or collected until the state obtains an approved NPDES program consistent with the requirements of this section.

(3) Any memorandum of agreement executed by the director to obtain approval to operate a state NPDES program shall not be binding on the state of Idaho unless authorized by enactment of a statute. Any memorandum of agreement not authorized in the above manner shall be of no force and effect.

(4) Implementation of a state NPDES program shall not occur prior to statutory enactment of implementing legislation and authorization of a memorandum of agreement as specified in subsection (3) of this section.

(5) The director, as appropriate, shall establish agreements with other state agencies with expertise to administer the NPDES program.

(6) No provision of this chapter shall be interpreted as to supersede, abrogate, injure or create rights to divert or store water and apply water to beneficial uses established under section 3, article XV, of the constitution of the state of Idaho, and title 42, Idaho Code.

(7) Nothing in this section is intended to supersede any existing agreements between federal, state or local agencies regarding authority over inspections, enforcement or other obligations under the clean water act.
History:

[39-175C, added 2005, ch. 57, sec. 1, p. 212; am. 2014, ch. 40, sec. 4, p. 96.]

39-175D. IDAHO POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT DECISIONS AND APPEAL OF DECISIONS. (1) Prior to making a final decision regarding Idaho pollutant discharge elimination system (IPDES) permits authorized by sections 39-175A through 39-175C, Idaho Code, the department shall provide the public notice and an opportunity to comment on the department's tentative decision. The department shall develop an administrative record that shall, at a minimum, include the tentative decision, all comments received, the department's response to comments and the basis for the department's decision. The decision-making process and the final decision with respect to IPDES permits shall not be subject to the contested case provisions set forth in chapter 52, title 67, Idaho Code.

(2) Notwithstanding any other provision of law, including without limitation, chapter 52, title 67, Idaho Code, the exclusive means of appealing the department's final decision regarding an IPDES permit shall be as set forth in this section and in rules authorized by this section and sections 39-175A through 39-175C, Idaho Code. Any person aggrieved by the department's final decision regarding an IPDES permit may appeal that decision. The appeal of the decision shall be heard by a hearing officer appointed by the director from a pool of hearing officers approved by the board. Hearing officers should be persons with technical expertise or experience in the issues presented in appeals. All appeals shall be based solely on the record developed by the department as required by subsection (1) of this section and the rules adopted by the board, and no further or additional evidence may be presented except as provided in rules adopted by the board.

(3) No person, including the director and hearing officer, who has or shares authority to approve all or portions of IPDES permits either in the first instance, as modified or reissued, or on appeal, shall have a conflict of interest as defined in 40 CFR 123.25(c).

(4) Any person aggrieved by a final determination of the hearing officer regarding an IPDES permit may secure judicial review by filing a petition for review as prescribed under the rules adopted by the board and the provisions of chapter 52, title 67, Idaho Code. The petition for review shall be served upon the hearing officer, the director of the department and the attorney general. Such service shall be jurisdictional, and the provisions of this section shall be the exclusive procedure for appeal.

(5) The board shall adopt rules consistent with the provisions of this section.

History:

[39-175D, added 2016, ch. 128, sec. 1, p. 373.]

39-175E. IDAHO POLLUTANT DISCHARGE ELIMINATION SYSTEM PROGRAM INVESTIGATION, INSPECTION AND ENFORCEMENT AUTHORITIES. (1) All investigation, inspection and enforcement authorities and requirements set forth in the environmental protection and health act, sections 39-101 through 39-130, Idaho Code, shall be available to the department and shall apply with respect to the Idaho pollutant discharge elimination system (IPDES) program. Such authorities include, without limitation, the authorities in sections 39-108, 39-109 and 39-117, Idaho Code, which shall be available to the department to conduct investigations, inspections and enforcement relating to violations of the rules, permits, requirements or orders issued or adopted pursuant to sections 39-175A through 39-175E, Idaho Code.

(2) The department is further authorized to enforce, through the authorities provided in this section, pretreatment standards, including local limits, developed and adopted by publicly owned treatment works, as required by 40 CFR 403.10(f)(1)(iv).

History:

[39-175E, added 2016, ch. 128, sec. 2, p. 374.]