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TITLES 39(44-87), 40

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TITLE 39
HEALTH AND SAFETY

CHAPTER	CHAPTER
44. HAZARDOUS WASTE MANAGEMENT, § 39-4427.	78. TOBACCO MASTER SETTLEMENT AGREEMENT, §§ 39-7803 — 39-7805.
45. NATURAL DEATH ACT, §§ 39-4504, 39-4505, 39-4507.	80. UNIFORM PUBLIC SCHOOL BUILDING SAFETY, § 39-8008.
55. CLEAN INDOOR AIR, §§ 39-5501 — 39-5504, 39-5506, 39-5507, 39-5511.	81. BASIN ENVIRONMENTAL IMPROVEMENT ACT, § 39-8106.
57. PREVENTION OF MINORS' ACCESS TO TOBACCO, §§ 39-5702, 39-5710, 39-5714 — 39-5718.	84. TOBACCO MASTER SETTLEMENT AGREEMENT COMPLEMENTARY ACT, §§ 39-8401 — 39-8407.
61. IDAHO CONRAD J-1 VISA WAIVER PROGRAM, §§ 39-6101 — 39-6118.	85. LAKE PEND OREILLE, PEND OREILLE RIVER, PRIEST LAKE AND PRIEST RIVER COMMISSION, §§ 39-8501 — 39-8504.
63. DOMESTIC VIOLENCE CRIME PREVENTION, §§ 39-6303, 39-6306A.	86. IDAHO ELEVATOR SAFETY CODE ACT, §§ 39-8601 — 39-8622.
65. WASTE TIRE DISPOSAL, §§ 39-6501 — 39-6508.	87. IDAHO COMMONSENSE CONSUMPTION ACT, §§ 39-8701 — 39-8706.
71. HAZARDOUS SUBSTANCE EMERGENCY RESPONSE ACT, §§ 39-7103, 39-7104, 39-7110, 39-7112.	

CHAPTER 44
HAZARDOUS WASTE MANAGEMENT

SECTION.
39-4427. Commercial disposal fees.

39-4427. Commercial disposal fees. — (1) There is imposed on the owner or operator of every commercial hazardous waste disposal facility or site permitted under section 39-4409, Idaho Code, the lowest applicable fee for each ton of waste or fraction thereof, as follows:

- (a) Thirty dollars (\$30.00) per gate ton or fraction thereof for all hazardous wastes as defined by RCRA or section 39-4407, Idaho Code;
- (b) Twenty-five dollars (\$25.00) per gate ton or fraction thereof for all manifested wastes not otherwise defined in this subsection;
- (c) Two dollars (\$2.00) per gate ton or fraction thereof for all manifested remediation wastes not otherwise defined in this subsection;
- (d) Twenty dollars (\$20.00) per gate ton or fraction thereof for the first two thousand five hundred (2,500) gate tons or less of wastes received by a facility or site from the same site, property or hazardous waste management unit if the wastes: (i) are PCBs regulated under Idaho or federal law and are in concentrations greater than fifty (50) parts per million; (ii) are hazardous debris; (iii) are hazardous wastes that become subject to regulation solely as a result of a removal or remedial action taken in response to environmental contamination; or (iv) are hazardous wastes that result from corrective action or closure of a regulated or nonregulated hazardous waste management unit;
- (e) Ten dollars (\$10.00) per gate ton or fraction thereof for all wastes contained in paragraph (d) of this subsection, if the wastes are received by

the same facility or site and are from the same site, property or hazardous waste management unit in an amount greater than two thousand five hundred (2,500) gate tons up to twelve thousand five hundred (12,500) gate tons;

(f) Five dollars (\$5.00) per gate ton or fraction thereof for all wastes contained in paragraph (d) of this subsection, if the wastes are received by the same facility or site and are from the same site, property or hazardous waste management unit in an amount greater than twelve thousand five hundred (12,500) gate tons up to twenty-five thousand (25,000) gate tons;

(g) Two dollars and fifty cents (\$2.50) per gate ton or fraction thereof for all wastes contained in paragraph (d) of this subsection, if the wastes are received by the same facility or site and are from the same site, property or hazardous waste management unit in an amount greater than twenty-five thousand (25,000) gate tons;

(h) Five dollars (\$5.00) per gate ton or fraction thereof for all hazardous wastes that: (i) are delisted or treated so that the wastes are no longer hazardous wastes; or (ii) are nonhazardous radiologically contaminated wastes including materials from the "Formerly Utilized Sites Remedial Action Program (FUSRAP)" sites administered by the government of the United States; or (iii) are PCBs in concentrations less than fifty (50) parts per million and not otherwise regulated by Idaho or federal law; or (iv) are wastes not otherwise defined in this subsection.

(2) The fees set forth in subsection (1) of this section shall not apply to any of the following types of wastes:

(a) Wastes generated or disposed of by a public agency or other person operating a household hazardous waste collection program;

(b) Wastes generated or disposed of by any agency of the state of Idaho.

Any waste for which the fees are waived under the provisions of this section must be noted as fee-waived waste on the return required in section 39-4428, Idaho Code, and is subject to all audit provisions of section 39-4429, Idaho Code.

(3) For wastes disposed of by any agency of the state of Idaho at any commercial hazardous waste disposal facility or site permitted under section 39-4409, Idaho Code, the director, pursuant to a written agreement with the director, the owner or operator of any such facility or site, may credit on the return required in section 39-4428, Idaho Code, and in the fee remitted, an amount equal to the actual cost charged by such owner or operator per gate ton or fraction thereof for the characterization, collection, identification, transportation, treatment, storage and disposal of wastes at such facility or site. [I.C., § 39-4427, am. and redesign. 1999, ch. 290, § 2, p. 718; am. 2001, ch. 297, § 2, p. 1072; am. 2002, ch. 176, § 1, p. 522; am. 2004, ch. 117, § 1, p. 391.]

Compiler's notes. Section 2 of S.L. 2004, ch. 117 declared an emergency. Approved March 19, 2004.

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Compiled Under the Supervision of the
Idaho Code Commission

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PUBLISHER'S NOTE

Since the publication in 1998 of Replacement Titles 39 (44-83), 40 many laws have been amended or repealed and many new laws have been enacted. The resulting increase in the size of the cumulative supplement for Titles 39 (44-83), 40 has made it necessary to revise this volume. Accordingly, Replacement Titles 39 (44-83), 40 is issued with the approval and under the direction of the Idaho Code Commission.

To better serve our customers, by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, court decisions are now being read as they are released by the courts. A consequence of this more current reading of cases, as they are posted on *lexis.com*, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the enacted by the Idaho Supreme Court and the Court of Appeals, and the appropriate federal courts, posted on *lexis.com* as of March 19, 2002. These cases will be printed in the following reports:

Pacific Reporter, 3rd Series
Federal Supplement, 2nd Series
Federal Reporter, 3rd Series
United States Supreme Court Reports, Lawyers' Edition, 2nd Series

Additionally, annotations have been taken from the following sources:

American Law Reports, 5th Series, through Volume 93
American Law Reports, Federal Series, through Volume 173
Opinions of Attorney General, 2001-3

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

I.R.C.P.	Idaho Rules of Civil Procedure
I.R.E.	Idaho Rules of Evidence
I.C.R.	Idaho Criminal Rules
M.C.R.	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
I.A.R.	Idaho Appellate Rules

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TITLE 39
HEALTH AND SAFETY

- | CHAPTER | CHAPTER |
|---|---|
| 44. HAZARDOUS WASTE MANAGEMENT, §§ 39-4401 — 39-4432. | 62. PCB WASTE DISPOSAL, §§ 39-6201 — 39-6216. |
| 45. NATURAL DEATH ACT, §§ 39-4501 — 39-4509. | 63. DOMESTIC VIOLENCE CRIME PREVENTION, §§ 39-6301 — 39-6317. |
| 46. IDAHO DEVELOPMENTAL DISABILITIES SERVICES AND FACILITIES ACT, §§ 39-4601 — 39-4608. | 64. CLEAN LAKES ACT, §§ 39-6401 — 39-6413. |
| 47. RESPITE CARE SERVICES. [REPEALED.] | 65. WASTE TIRE DISPOSAL, §§ 39-6501 — 39-6507. |
| A47. PERSONAL CARE SERVICES. [AMENDED AND REDESIGNATED.] | 66. BIG PAYETTE LAKE WATER QUALITY ACT, §§ 39-6601 — 39-6612. |
| 48. IMMUNIZATION, §§ 39-4801 — 39-4804. | 67 — 69. [RESERVED.] |
| 49. IDAHO HEALTH PLANNING ACT, §§ 39-4901 — 39-4904. | 70. SALE AND DISPOSAL OF BATTERIES, §§ 39-7001 — 39-7004. |
| [50] 49. EQUAL OPPORTUNITY FOR DISPLACED HOMEMAKER ACT, §§ [39-5001] — 39-5009. | 71. HAZARDOUS SUBSTANCE EMERGENCY RESPONSE ACT, §§ 39-7101 — 39-7115. |
| 51. FAMILY SUPPORT AND IN-HOME ASSISTANCE, §§ 39-5100 — 39-5106. | 72. IDAHO LAND REMEDIATION ACT, §§ 39-7201 — 39-7210. |
| 52. DOMESTIC VIOLENCE PROJECT GRANTS, §§ 39-5201 — 39-5213. | 73. [RESERVED.] |
| 53. ADULT ABUSE, NEGLECT AND EXPLOITATION ACT, §§ 39-5301 — 39-5312. | 74. IDAHO SOLID WASTE FACILITIES ACT, §§ 39-7401 — 39-7421. |
| 54. ARTIFICIAL INSEMINATION, §§ 39-5401 — 39-5408. | 75. ADOPTION AND MEDICAL ASSISTANCE, §§ 39-7501 — 39-7505. |
| 55. CLEAN INDOOR AIR, §§ 39-5501 — 39-5510. | 76. PUBLIC DRINKING WATER SYSTEM LOANS, §§ 39-7601 — 39-7606. |
| 56. PERSONAL CARE SERVICES, §§ 39-5601 — 39-5609. | 77. VOLUNTEER HEALTH CARE PROVIDER IMMUNITY, §§ 39-7701 — 39-7705. |
| 57. PREVENTION OF MINORS' ACCESS TO TOBACCO, §§ 39-5701 — 39-5713. | 78. TOBACCO MASTER SETTLEMENT AGREEMENT, §§ 39-7801 — 39-7805. |
| 58. HAZARDOUS WASTE FACILITY SITING, §§ 39-5801 — 39-5820. | 79. LOCAL OPTION SWINE FACILITIES SITING ACT, §§ 39-7901 — 39-7916. |
| 59. IDAHO RURAL HEALTH CARE ACCESS PROGRAM, §§ 39-5901 — 39-5913. | 80. UNIFORM PUBLIC SCHOOL BUILDING SAFETY, §§ 39-8001 — 39-8012. |
| 60. CHILDREN'S TRUST FUND, §§ 39-6001 — 39-6008. | 81. BASIN ENVIRONMENTAL IMPROVEMENT ACT, §§ 39-8101 — 39-8115. |
| 61. [RESERVED.] | [82] 81. IDAHO SAFE HAVEN ACT, §§ [39-8201] — [39-8207]. |
| | [83] 81. TRAUMA CARE, §§ [39-8301], [39-8302]. |

CHAPTER 44

HAZARDOUS WASTE MANAGEMENT

- | SECTION. | SECTION. |
|---|---|
| 39-4401. Short title. | waste treatment, storage, or disposal facilities. |
| 39-4402. Legislative findings and purposes. | 39-4410. Transportation of hazardous waste. |
| 39-4403. Definitions. | 39-4411. Records — Reporting — Monitoring. |
| 39-4404. Consistency with federal law. | 39-4412. Inspections — Right of entry. |
| 39-4405. Rules in general. | 39-4413. Enforcement procedures. |
| 39-4406. General powers and duties of director. | 39-4414. Remedies. |
| 39-4407. Identification of hazardous wastes. | 39-4415. Violations constituting misdemeanors. |
| 39-4408. Unauthorized treatment, storage, release, use or disposal of hazardous waste prohibited. | 39-4416. Citizen suits. |
| 39-4409. Permit requirements for hazardous | 39-4417. Hazardous waste emergency account. |

SECTION.

39-4417A. [Reserved.]
 39-4417B. [Repealed.]
 39-4418. Local government notice.
 39-4419. Interstate cooperation.
 39-4420. Employment security.
 39-4421. Good samaritan protection.
 39-4422. Severability.
 39-4423. Disposal of restricted hazardous wastes prohibited.
 39-4424. Disposal of manifested waste.
 39-4425. [Reserved.]
 39-4426. Appointment of inspectors.
 39-4427. Commercial disposal fees.
 39-4427A. [Amended and Redesignated.]
 39-4427B — 39-4427D. [Repealed.]

SECTION.

39-4427C. Treatment, storage or disposal facility fee.
 39-4427D. Hazardous waste fees — Duplication.
 39-4428. Collection of commercial disposal fees — Returns.
 39-4429. Books and records to be preserved — Entry and inspection by department of environmental quality.
 39-4430. Additions and penalties.
 39-4431. Collection and enforcement.
 39-4432. Distribution of commercial disposal fee revenues.

39-4401. Short title. — This act may be known and cited as the "Hazardous Waste Management Act of 1983." [I.C., § 39-4401, as added by 1983, ch. 154, § 1, p. 416.]

Compiler's notes. The words "this act" refer to S.L. 1983, ch. 154, § 1 which is compiled as §§ 39-4401 through 39-4422.

Sec. to sec. ref. This chapter is referred to in §§ 9-342A, 39-5804, 39-5809, 39-5819, 39-7403, 49-2206, 63-3029D and 63-602CC.

Cited in: Idaho v. Hanna Mining Co., 699 F. Supp. 827 (D. Idaho 1987).

Collateral References. Amount and characteristics of wastes as equitable factors in allocation of response costs pursuant to § 113(f)(1) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C.A. § 9613(f)(1); multiple waste streams. 162 A.L.R. Fed. 371.

39-4402. Legislative findings and purposes. — (1) The legislature of the State of Idaho finds:

- (a) That continuing technological progress, increases in manufacturing, and the abatement of air and water pollution have resulted in ever-increasing quantities of hazardous waste;
- (b) That the public health and safety, and the environment, are threatened when hazardous wastes are not managed in an environmentally sound manner;
- (c) That the knowledge and technology necessary for alleviating adverse health, environmental and aesthetic impacts resulting from current hazardous waste management and disposal practices are generally available; and
- (d) That the problem of proper management of hazardous waste has become a matter of great statewide concern.

(2) Therefore, it is hereby declared that the purposes of this act are:

- (a) To protect the public health and safety, the health of living organisms, and the environment from the effects of the improper, inadequate, or unsound management of hazardous waste;
- (b) To establish a program to track and control hazardous wastes from the time they are generated through transportation, treatment, storage, and disposal; and,
- (c) To assure the safe and adequate management of hazardous wastes within the state. [I.C., § 39-4402, as added by 1983, ch. 154, § 1, p. 416.]

Compiler's notes. For words "this act," see Compiler's notes, § 39-4401.

Collateral References. Validity and construction of statutes, ordinances, or regulations controlling discharge of industrial

wastes into sewer systems. 47 A.L.R.3d 1224.

Applicability of zoning regulations to waste disposal facilities of state or local governmental entities. 59 A.L.R.3d 1244.

39-4403. Definitions. — As used in this chapter:

- (1) "Board" means the Idaho board of environmental quality.
- (2) "Commercial hazardous waste facility or site" means any hazardous waste facility whose primary business is the treatment, storage or disposal, for a fee or other consideration, of hazardous waste generated offsite by generators other than the owner and operator of the facility.
- (3) "Department" means the Idaho department of environmental quality.
- (4) "Director" means the director of the Idaho department of environmental quality or the director's authorized agent.
- (5) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous waste into or on any land or water so that such hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.
- (6) "Gate ton" means the weight, in tons (2,000 pounds/ton), of waste material received at a facility. This weight does not include any subsequent changes to the weight resulting from the management of the waste by the facility.
- (7) "Generator" means any person, who by virtue of ownership, management, or control, is responsible for causing or allowing to be caused the creation of a hazardous waste.
- (8) "Hazardous waste" means a waste or combination of wastes of a solid, liquid, semisolid, or contained gaseous form which, because of its quantity, concentration or characteristics (physical, chemical or biological) may:
 - (a) Cause or significantly contribute to an increase in deaths or an increase in serious, irreversible or incapacitating reversible illnesses; or
 - (b) Pose a substantial threat to human health or to the environment if improperly treated, stored, disposed of, or managed. Such wastes include, but are not limited to, materials which are toxic, corrosive, ignitable, or reactive, or materials which may have mutagenic, teratogenic, or carcinogenic properties but do not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to national pollution discharge elimination system permits under the federal water pollution control act, as amended, 33 U.S.C., section 1251 et seq., or source, special nuclear, or byproduct material as defined by the atomic energy act of 1954, as amended, 42 U.S.C., section 2011 et seq.
- (9) "Hazardous waste management" means the systematic control of the collection, source separation, storage, treatment, transportation, processing, and disposal of hazardous wastes.
- (10) "Hazardous waste facility or site" means any property, structure, or ancillary equipment intended or used for the transportation, treatment, storage or disposal of hazardous wastes.

(11) "Injection" means the subsurface emplacement of free liquids.

(12) "Manifest" means a form used for identifying the quantity, composition, origin, routing, waste identification code(s), and destination of hazardous waste during any transportation from the point of generation to the point of treatment, storage or disposal.

(13) "Manifested waste" means waste which at the point of origin or generation is required to be manifested for transportation in a manner similar to that of the federal uniform hazardous waste manifest or by other manifest requirements designed to assure proper treatment, storage and disposal of such waste.

(14) "PCB waste" means any waste or waste item which is not included in the definition of "hazardous waste" and which is contaminated with polychlorinated biphenyls.

(15) "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.

(16) "RCRA" means the resource conservation and recovery act of 1976 as amended from time to time.

(17) "Restricted hazardous waste" means a waste or combination of wastes regulated as land disposal restricted pursuant to federal statutes and regulations, including 40 CFR part 268. Restricted hazardous waste also includes byproduct, source, special nuclear materials or devices or equipment utilizing such materials regulated under the federal atomic energy act of 1954, as amended. Restricted hazardous waste shall not include radiologically contaminated waste materials from "Formerly Utilized Sites Remedial Action Program (FUSRAP)" sites administered by the United States army corps of engineers and being disposed of pursuant to a contract in existence on July 1, 2001, and as may be renewed thereafter.

(18) "Storage" means the containment of hazardous wastes, on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous wastes.

(19) "Transportation" means the movement of any hazardous waste to or from a hazardous waste facility or site.

(20) "Transporter" means any person who transports a hazardous waste to or from a hazardous waste facility or site.

(21) "Treatment" means any method, technique, or process, including neutralization, which is designed not to be an integral part of a production process, but which is rather designed to change the physical, chemical, or biological character or composition of any hazardous waste prior to storage or final disposal so as to neutralize such waste or so as to render such waste nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

(22) "Waste" means any solid, semisolid, liquid or contained gaseous material for which no reasonable use or reuse is intended or which is

intended to be discarded. [I.C., § 39-4403, as added by 1983, ch. 154, § 1, p. 416; am. 1984, ch. 205, § 1, p. 502; am. 1986, ch. 148, § 1, p. 415; am. 1986, ch. 324, § 1, p. 794; am 1989, ch. 253, § 1, p. 626; am. 1993, ch. 291, § 1, p. 1082; am. 1994, ch. 419, § 1, p. 415; am. 2001, ch. 103, § 45, p. 253; am. 2001, ch. 297, § 3, p. 1072.]

Compiler's notes. This section was amended by two 2001 acts which appear to be compatible and have been compiled together.

The amendment by ch. 103, § 45, substituted "environmental quality" for "health and welfare" throughout the section; in subsection (7)(b), substituted "byproduct" for "by product"; and made stylistic changes.

The amendment by ch. 297, § 3, in subsection (17), added the second sentence.

The Resource Conservation and Recovery Act of 1976, referred to in subdivision (15) of this section, is compiled as 42 U.S.C. § 6901 et seq.

Section 2 of S.L. 1984, ch. 205 is compiled as § 39-4410.

Section 2 of S.L. 1986, ch. 148 is compiled as § 39-4405.

Section 2 of S.L. 1986, ch. 324 is compiled as § 39-4423.

Section 2 of S.L. 1989, ch. 253 is compiled as § 39-4424.

Section 2 of S.L. 1994, ch. 419 is compiled as § 39-4427.

Sections 44 and 46 of S.L. 2001, ch. 103 are compiled as §§ 39-3638 and 39-4426, respectively.

Sections 2 and 4 of S.L. 2001, ch. 297, are compiled as §§ 39-4427 and 39-4405, respectively.

Cross ref. Inspection of hazardous waste carriers, penalties §§ 67-2917, 67-2918.

Sec. to sec. ref. This section is referred to in §§ 18-3905 and 39-4423.

39-4404. Consistency with federal law. — The legislature intends that the state of Idaho enact and carry out a hazardous waste program that will enable the state to assume primacy over hazardous waste control from the federal government.

The legislature finds that the RCRA, as amended, 42 U.S.C., section 6901 et seq., and federal regulations adopted pursuant thereto, establish complex and detailed provisions for regulation of those who generate, transport, treat, store, and dispose of hazardous wastes. 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 RCRA. However, by the provisions of this chapter, the legislature desires to avoid the existence of duplicative, overlapping or conflicting state and federal regulatory systems.

Therefore, the board is directed to promulgate rules which are consistent with RCRA and the federal regulations adopted by the administrator of the United States environmental protection agency to implement RCRA. Farmers and ranchers who treat, store, or dispose of waste pesticides from their operations on lands owned or controlled by them shall not be required by board rules to do anything more than follow the instructions on the pesticide label and triple rinse empty containers in accordance with the RCRA regulations of the environmental protection agency. The board may not promulgate any rule that would impose conditions or requirements more stringent or broader in scope than RCRA and the RCRA regulations of the environmental protection agency. The board may, however, promulgate procedural rules and rules specifically authorized by this chapter or other state statutes without showing that those rules are required by RCRA or the regulations of the environmental protection agency; provided that those rules shall not conflict with this section, other sections of this chapter,

RCRA, or the regulations of the environmental protection agency. Any rule promulgated by the board shall be valid until it is repealed or modified through the administrative process of chapter 52, title 67, Idaho Code. [I.C., § 39-4404, as added by 1983, ch. 154, § 1, p. 416; am. 1986, ch. 182, § 1, p. 479; am. 1988, ch. 6, § 1, p. 6; am. 1988, ch. 259, § 1, p. 498; am. 1993, ch. 216, § 27, p. 587; am. 1993, ch. 291, § 2, p. 1082.]

Compiler's notes. This section was amended by two 1993 acts — ch. 216, § 27 and ch. 291, § 2 both effective July 1, 1993 — which do not conflict and have been compiled together.

The amendment by ch. 216, § 27 in the first sentence of the second paragraph added "federal" following "6901 et seq., and"; in the third paragraph in the present first through the third sentences deleted "and regulations" following "rules" wherever they appeared; in the present fourth sentence deleted "and regulations" following "rules" in the first four places it appears and deleted "rules and" preceding "regulations of the environmental protection agency."; and in the present fifth sentence

deleted "or regulation" following "Any rule" and substituted "chapter 52, title 67, Idaho Code" for "section 67-5201, Idaho Code, et seq."

The amendment by ch. 291, § 2 in the first sentence of the third paragraph deleted "in substance" preceding "consistent with RCRA" and deleted a former second sentence.

Section 2 of S.L. 1988, ch. 259 is compiled as § 39-4409.

Section 26 of S.L. 1993, ch. 216 is compiled as § 39-4120, and section 28 was repealed.

Section 3 of S.L. 1993, ch. 291 is compiled as § 39-4406.

Section 2 of S.L. 1986, ch. 182, declared an emergency. Approved April 1, 1986.

39-4405. Rules in general. — Pursuant to the procedures established by the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, the board shall adopt such rules as are necessary and feasible for the management of the generation, collection, transportation, treatment, storage, and disposal of hazardous wastes within the state. The board shall also adopt such rules as necessary to regulate persons who produce, burn, distribute, and market fuel containing hazardous waste. The rules promulgated by the board shall be a part of this code and shall have the force and effect of law. Such rules shall include, but not be limited to:

- (1) Criteria for the determination of whether any waste or combination of wastes is hazardous for the purposes of this chapter;
- (2) Rules for those who generate, transport, treat, store, or dispose of hazardous wastes;
- (3) Rules, consistent with those issued by the United States environmental protection agency and the United States department of transportation, for containerization, labeling and manifesting of hazardous wastes;
- (4) Rules specifying the terms and conditions under which the department shall issue, modify, suspend, revoke, or deny such permits as shall be required by this chapter;
- (5) Lists of those wastes or combinations of wastes which are not compatible and which may not be stored or disposed of together;
- (6) Procedures and requirements for the reporting of the generation, transportation, treatment, storage or disposal of hazardous wastes;
- (7) Rules establishing standards and procedures for the training of personnel at generation sites and at hazardous waste facilities and sites;
- (8) Release detection, prevention and correction rules applicable to all owners and operators of underground storage tanks, as may be necessary to protect human health and the environment;

(9) Rules specifying radioactive materials or other radioactive materials occurring naturally that may be disposed of at a commercial hazardous waste facility or site. [I.C., § 39-4405, as added by 1983, ch. 154, § 1, p. 416; am. 1986, ch. 148, § 2, p. 415; am. 2001, ch. 297, § 4, p. 1072.]

Compiler's notes. Sections 1 and 3 of S.L. 1986, ch. 148 are compiled as §§ 39-4403 and 39-4408. **Sec. to sec. ref.** This section is referred to in § 39-4411.

Section 3 of S.L. 2001, ch. 297, is compiled as § 39-4403.

39-4406. General powers and duties of director. — The director:

(1) Shall take all actions not inconsistent with this chapter as are necessary and feasible to enable the department to assume and continue primacy over hazardous waste management, pursuant to RCRA;

(2) May conduct and publish studies of hazardous waste management in this state;

(3) Shall develop, publish, and revise as necessary a plan for the safe and effective management of hazardous wastes within this state. Such a plan may identify those locations in the state which are not suitable for the establishment of hazardous waste treatment or disposal facilities or sites;

(4) Shall exercise all powers and discharge all duties expressed in or implied from the other sections of this chapter. [I.C., § 39-4406, as added by 1983, ch. 154, § 1, p. 416; am. 1993, ch. 291, § 3, p. 1082.]

Compiler's notes. Section 2 of S.L. 1993, ch. 291 is compiled as § 39-4404.

39-4407. Identification of hazardous wastes. — (1) The board shall establish criteria for determining if any waste or combination of wastes is hazardous or nonhazardous, for the purposes of this chapter.

(2) The board may adopt, and amend from time to time a list or lists of hazardous wastes. The board may, with public notice but without the necessity of a public hearing, list as hazardous any waste or combination of wastes determined to be hazardous by the United States environmental protection agency. To accomplish this goal, the board may adopt by reference the regulations containing the lists of hazardous wastes and the set of characteristics for identifying hazardous wastes promulgated by the United States environmental protection agency pursuant to RCRA. The board shall update the regulations adopted pursuant to this section as needed to reflect regulatory amendments promulgated by the United States environmental protection agency. The board may adopt regulations for a state hazardous waste delisting program equivalent to that set forth in 40 CFR sections 260.20(b) and 260.22. The state delisting program shall provide for public notice and opportunity for comment before granting or denying delisting requests. [I.C., § 39-4407, as added by 1983, ch. 154, § 1, p. 416; am. 1993, ch. 291, § 4, p. 1082.]

Compiler's notes. Section 5 of S.L. 1993, ch. 291 is compiled as § 39-4410. **Sec. to sec. ref.** This section is referred to in §§ 39-4411, 39-4427.

program is authorized by the administrator of that agency shall be adopted by the department as a state granted interim status or as a state granted permit until the department issues a new state permit. The board may adopt such rules and regulations as necessary to:

- (a) Allow other facilities to qualify for interim status;
- (b) Require existing interim status surface impoundments, new units, replacement of existing units and lateral expansions of existing interim status facilities to comply with all regulations which apply to new facilities; and
- (c) Provide for the termination of interim status.

(3) The board shall promulgate rules and regulations establishing the terms and conditions for issuing permits to the described facilities and sites. The rules and regulations shall provide for, but not be limited to:

- (a) Standards and procedures for the safe operation and maintenance of the facilities and sites;
- (b) Education and training qualifications of personnel at the facilities and sites;
- (c) Contractual commitment or consent to each facility or site from all holders of interests in the real property committed to that facility or site;
- (d) Monetary assurances in such form and amount as are necessary for effective management, maintenance, and monitoring of the facilities and sites during and after operation;
- (e) Evidence of financial responsibility for corrective action on-site and off-site;
- (f) Liability insurance in such form and amount as is necessary to compensate for potential damages caused by the facilities and sites; provided, that liability insurance shall not be required in the event that liability insurance is not required by the federal regulations adopted pursuant to the RCRA;
- (g) Emergency equipment and emergency response plans appropriate to the facilities and sites;
- (h) Public participation in the permitting process consistent with 42 U.S.C. section 6974(b).

(4) Permits shall be issued for a period not to exceed ten (10) years or the maximum period allowed under RCRA, whichever is greater. However, permits may be reviewed at least every five (5) years and modified as necessary to take into account changes in this chapter or regulations promulgated pursuant to it and improvements in technology. Permits issued to hazardous waste facilities and sites by the department prior to the effective date of this chapter shall be reissued to conform with the provisions of this chapter and the rules and regulations promulgated under this chapter.

(5) Any permit issued after the effective date of this provision shall require corrective action to be taken on-site and off-site for all releases of hazardous waste or constituents, from any solid waste management unit at the treatment, storage, or disposal facility seeking the permit, regardless of the time when the waste was placed in such unit. Permits issued from November 8, 1985, until the effective date of this provision shall be reissued to conform with this provision.

(6) Any permit issued under this section may be revoked by the director pursuant to the provisions of section 39-4413, Idaho Code, if the permitted party fails to comply with the terms and conditions of the permit, this chapter, or the rules and regulations promulgated under this chapter.

(7) The department may issue a variance from the requirements of the rules and regulations promulgated under this section, if, in the judgment of the director, application of the requirements would cause unreasonable hardship and the granting of a variance would not be harmful to the public interest or inconsistent with RCRA requirements. A variance shall not exceed one (1) year in duration and may be renewed or extended only after the department provides public notice and an opportunity for public comment.

(8)(a) The director of the department may issue a research, development and demonstration permit for any hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated. Any such permit shall include such terms and conditions as will assure protection of human health and the environment. Such permits shall:

1. Provide for the construction of such facilities, as necessary, and for operation of the facility for not longer than one (1) year (unless renewed as provided below); and
2. Provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the director deems necessary for purposes of determining the efficiency and performance capabilities of the technology or process and the effects of such technology or process on human health and the environment; and
3. Include such requirements as the director deems necessary to protect human health and the environment (including, but not limited to, requirements regarding monitoring, operation, insurance or bonding, financial responsibility, closure, and remedial action); and
4. Include such requirements as the director deems necessary regarding testing and providing of information to the director with respect to the operation of the facility.

(b) The director may apply the criteria set forth in paragraph (a) of this subsection in establishing the conditions of each permit without separate establishment of regulations implementing such criteria.

(c) For the purpose of expediting review and issuance of permits under this subsection, the director may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements established in the general permit regulations except that there may be no modification or waiver of regulations regarding financial responsibility (including insurance) or of applicable public participation procedures.

(d) The director may renew a research, development and demonstration permit which has been issued pursuant to this subsection. The renewal term shall be no longer than one (1) year. A permit shall not be renewed more than three (3) times. [I.C., § 39-4409, as added by 1983, ch. 154, § 1, p. 416; am. 1986, ch. 148, § 4, p. 415; am. 1987, ch. 102, § 1, p. 204; am. 1988, ch. 7, § 1, p. 7; am. 1988, ch. 259, § 2, p. 498.]

Compiler's notes. This section was amended by two 1988 acts which appear to be compatible and have been compiled together.

The amendment by ch. 7, in the first sentence of subsection (5), inserted "issued"; and added subdivision (8)(d).

The amendment by ch. 259, in subdivision (2)(b), inserted "existing interim status surface impoundments"; and in the first sentence of subsection (5), inserted "issued."

The words enclosed in parentheses so appeared in the law as enacted.

Section 5 of S.L. 1986, ch. 148 is compiled as § 39-4411.

Sections 1 and 3 of S.L. 1988, ch. 259 are compiled as §§ 39-4404 and 39-4413, respectively.

Sec. to sec. ref. This section is referred to in §§ 39-4413, 39-4426, 39-4427.

39-4410. Transportation of hazardous waste. — (1) The board shall promulgate hazardous waste transportation rules and regulations to control the intrastate and interstate transportation of federally regulated types and quantities of hazardous waste. The rules and regulations shall be consistent with the rules and regulations issued by the United States department of transportation and the United States environmental protection agency. The rules and regulations shall also be consistent with the rules and regulations of the Idaho public utilities commission unless such consistency would impair the primacy or the effectiveness of the state's hazardous waste management program. In that case the board shall confer with the commission and endeavor to develop mutually acceptable transportation rules and regulations. If mutually acceptable rules and regulations cannot be developed, the board shall promulgate transportation rules and regulations that minimize conflict with the commission's rules and regulations while assuring the primary authority and effectiveness of the state's hazardous waste management program. Rules and regulations so promulgated by the board shall prevail over conflicting rules and regulations of the commission.

(2) The hazardous waste transportation rules and regulations shall apply to all transporters of federally regulated types and quantities of hazardous waste generated either by themselves or by others. These rules and regulations shall apply to any movement of a regulated quantity of hazardous wastes to or from a hazardous waste facility or site.

(3) The hazardous waste transportation rules and regulations shall provide for but not be limited to:

- (a) Standards for the containerization and labeling of hazardous wastes;
- (b) Standards for the handling and placarding of hazardous waste shipments;
- (c) A hazardous waste tracking system requiring that:
 - (i) All transporters of federally regulated types and quantities of hazardous waste obtain an identification number from the department, the environmental protection agency, or another approved state program, before accepting hazardous waste for transport;
 - (ii) All shipments of federally regulated types and quantities of hazardous waste to be shipped off site or received from off site be accompanied by a manifest or similar form describing the hazardous waste being shipped and its destination;
 - (iii) A copy of each manifest or similar form be returned to the generator and/or originator of the shipment and a copy be retained by the transporter for a minimum of three (3) years.

(4) The hazardous waste transportation rules and regulations may provide for special routing of hazardous waste shipments in this state when necessary to protect the public health, the public safety, or the environment consistent with federal statutory, regulatory and constitutional requirements.

(5) No commercial hazardous waste disposal facility or site permitted under section 39-4409, Idaho Code, shall receive regulated quantities of hazardous waste as defined by federal law from a motor vehicle or trailer unless the hazardous waste is accompanied by a proper manifest and the transporter has obtained a special permit from the Idaho transportation department as provided in sections 49-2202 and 49-2203, Idaho Code. If an improperly documented shipment of hazardous waste arrives at a permitted commercial hazardous waste facility or site, the owner or operator of the facility or site shall immediately notify the Idaho transportation department and the Idaho state police and follow the requirements of its permits and licenses for notification of appropriate agencies. [I.C., § 39-4410, as added by 1983, ch. 154, § 1, p. 416; am. 1984, ch. 205, § 2, p. 502; am. 1986, ch. 231, § 1, p. 627; am. 1988, ch. 265, § 568, p. 549; am. 1993, ch. 291, § 5, p. 1082; am. 2000, ch. 469, § 98, p. 1450.]

Compiler's notes. Sections 1 and 3 of S.L. 1984, ch. 205 are compiled as §§ 39-4403 and 39-4417B, respectively.

Section 2 of S.L. 1986, ch. 231 is compiled as § 39-4417B.

Sections 567 and 569 of S.L. 1988, ch. 265 are compiled as §§ 36-1301 and 39-4426.

Section 4 of S.L. 1993, ch. 291 is compiled as § 39-4407.

Sections 97 and 99 of S.L. 2000, ch. 469, are compiled as §§ 39-3562 and 39-5814, respectively.

Section 5 of S.L. 1986, ch. 231, read: "An emergency existing therefor, which emergency is hereby declared to exist, Section 49-2512, Idaho Code [amended and redesignated as § 49-2210], which is enacted by Section 4 of this act shall be in full force and effect on and after this act's passage and approval. The remaining provisions of this act shall be in full force and effect on and after

January 1, 1987; provided, however, that the Idaho Transportation Board and Idaho Transportation Department shall be authorized to permit any person renewing or purchasing a vehicle registration on and after July 1, 1986, to acquire a vehicle registration endorsement prior to January 1, 1987, and any receipts therefrom shall be placed in the Hazardous Material/Hazardous Waste Transportation Enforcement Account which is created in section 49-2507, Idaho Code [amended and redesignated as § 49-2205], which is enacted by Section 4, of this act and Section 49-2507, Idaho Code, which is enacted by Section 4 of this act shall be in full force and effect on and after July 1, 1986. Approved April 3, 1986."

Section 586 of S.L. 1987, ch. 265 provided that the act should become effective on and after January 1, 1989.

Cross ref. Motor Carrier Act, §§ 61-801 — 61-818.

39-4411. Records — Reporting — Monitoring. — (1) Pursuant to the provisions of section 39-4405, Idaho Code, the board shall adopt, and amend as necessary, such rules relating to records, reporting, and monitoring as may be needed to achieve the purposes of this chapter. These rules may include, but shall not be limited to, prescribing procedures and requirements for:

- (a) The establishment, maintenance, and format of records and reports;
- (b) The submittal of records and reports;
- (c) The taking of samples and the performing of tests and of analyses;
- (d) The use of approved monitoring methods and techniques;
- (e) The installation, calibration, use, and maintenance of monitoring equipment; and

(f) The provision of relevant information to the department.

(2) Sixty (60) days after promulgation of the criteria and lists specified under section 39-4407, Idaho Code, and the rules required under section 39-4405, Idaho Code, and subsection (1) of this section, the generation, transportation, treatment, storage, or disposal of a hazardous waste in this state by any person without reporting such activity to the department as required by the rules issued pursuant to subsection (1) of this section shall be unlawful.

(3) Information obtained by the department or by agents, contractors, or other representatives of the department, under any provisions of this chapter, shall be subject to disclosure according to chapter 3, title 9, Idaho Code.

(4) Effective January 1, 1996, each generator shall, at the discretion of the director, no later than thirty (30) days after the end of each calendar year submit a written annual report to the department including the following information:

- (a) The types and quantities of hazardous wastes generated;
- (b) The types and quantities of such wastes shipped for treatment and disposal by landfilling or other means of disposal;
- (c) The types and quantities of such wastes remaining in storage at the end of the reporting period;
- (d) Whether such wastes are destined for disposal or treatment in this state or whether such wastes are destined for disposal or treatment outside this state.

(5) Effective January 1, 1996, the operator of each commercial hazardous waste disposal facility or site in the state shall, no later than thirty (30) days after the end of each calendar year, submit a written annual report to the department providing information on the types and quantities of wastes received which were generated in Idaho, and information on the types and quantities of wastes received which were generated in other states.

(6) Prior to March 1 of each year the department shall submit a report to the governor and the legislature detailing the types and quantities of hazardous wastes generated in this state, the types and quantities of such wastes shipped for treatment and disposal by landfilling or other means of disposal, the types and quantities of such wastes remaining in storage at the end of the most recent reporting period and the types and quantities of hazardous waste generated outside this state and shipped into this state for storage or disposal. [I.C., § 39-4411, as added by 1983, ch. 154, § 1, p. 416; am. 1984, ch. 258, § 1, p. 618; am. 1986, ch. 148, § 5, p. 415; am. 1990, ch. 213, § 43, p. 480; am. 1993, ch. 291, § 6, p. 1082; am. 1996, ch. 125, § 1, p. 439; am. 1998, ch. 125, § 4, p. 461.]

Compiler's notes. Sections 4 and 6 of S.L. 1986, ch. 148 are compiled as §§ 39-4409 and 39-4413.

Section 42 of S.L. 1990, ch. 213 is compiled as § 39-1393.

Section 7 of S.L. 1993, ch. 291 is compiled as § 39-4416.

Section 3 of S.L. 1998, ch. 125 is compiled as § 39-117.

Section 5 of S.L. 1998, ch. 125 declared an emergency. Approved March 19, 1998.

Section 2 of S.L. 1996, ch. 125 declared an emergency and provided that the act should be in full force and effect on and after its

passage and approval and retroactive to January 1, 1996. Approved March 8, 1996.

Sec. to sec. ref. This section is referred to in § 39-4429.

39-4412. Inspections — Right of entry. — (1) All inspections and searches 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 article I, section 17, of the constitution of the state of Idaho. The state shall not, under the authority granted by this chapter, conduct warrantless administrative 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.

(2) For the purposes of developing or enforcing any provision of this chapter or any rule or regulation authorized by this chapter, any duly authorized state employee or representative may, upon presentation of appropriate credentials, at any reasonable time:

(a) Enter upon any private or public property where hazardous wastes are or have been generated, transported, treated, stored, or disposed of to inspect and to secure samples of such wastes, their containers, and their labels;

(b) Enter into any aircraft, vehicle, vessel, rail car, trailer, van, or other means of conveyance where hazardous wastes are or have been contained to inspect and to secure samples of such wastes, their containers, and their labels;

(c) Enter any private or public property, or means of conveyance, where records, reports, information or test results relating to the generation, transportation, treatment, storage, or disposal of hazardous wastes exist to inspect and copy such documents.

(3) Upon request by an authorized agent of a property owner or facility operator, the department shall provide the property owner or facility operator with a receipt for samples taken and a copy of sample analysis. Duplicate samples shall similarly be provided upon request if the requesting party agrees to have the samples analyzed and to share the results of the analysis with the department.

(4) The right of entry of a duly authorized state employee or representative shall not be subject to the waiver of any potential tort liability of the facility owner or operator. The right of entry of a duly authorized state or health district employee shall not be subject to any confidentiality requirements other than those specified in section 39-4411(3), Idaho Code, and chapter 3, title 9, Idaho Code. The right of entry of a private contractor working in a representative capacity for the department may, however, be made subject to additional confidentiality requirements so long as those requirements do not interfere unreasonably with the development of information by the department or the transmission of information from the contractor to the department or the United States environmental protection agency.

(5) Any magistrate or district court judge is authorized to issue an administrative search warrant upon a request from the director describing

reasonable cause for issuance of the warrant or the existence of a reasonable program of inspection. [I.C., § 39-4412, as added by 1983, ch. 154, § 1, p. 416; am. 1990, ch. 213, § 44, p. 480.]

Compiler's notes. Section 45 of S.L. 1990, ch. 213 is compiled as § 39-5211. Section 111 of S.L. 1990, ch. 213 as amended by § 16 of S.L. 1991, ch. 329 provided that §§ 3 through 45 and 48 through 110 of the act should take effect July 1, 1993 and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.

39-4413. Enforcement procedures. — (A) Whenever the director determines that any person is in violation of any provision of this chapter or any permit, standard, regulation, condition, requirement, compliance agreement or order issued or promulgated pursuant to this chapter, one or more of the following actions may be taken:

(1) ADMINISTRATIVE ENFORCEMENT ACTIONS.

(a) 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.

(b) Scheduling Compliance Conference. If a recipient of a notice of violation contacts the department within fifteen (15) days of the receipt of 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 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 subsection (3) of this section.

(c) 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 for assuring future compliance. 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 for payment of any agreed civil penalty.

(d) 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.

(e) Failure to Reach Agreement on 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 pursuant to subsection (A)(1)(b) of this section, the director may commence and prosecute a civil enforcement action in district court, in accordance with subsection (A)(3) of this section.

(2) PERMIT SUSPENSION OR REVOCATION PROCEEDINGS.

(a) Grounds. The director may revoke or temporarily suspend the permit of any hazardous waste facility or site pursuant to the grounds provided in subsection (6) of section 39-4409, Idaho Code.

A violation that is shown to have occurred as the result of an unforeseeable act of God despite a permitted party's reasonable efforts to comply with all applicable legal requirements shall not be grounds for a suspension or revocation.

(b) Notice of Hearing. The director shall commence a permit suspension or revocation action by giving a permitted party a written notice of intent to suspend or revoke. The notice shall inform the permitted party of facts or conduct which warrant suspension or revocation of the permit. The notice, hearing, and record requirements for contested cases contained in the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, and subsection (A)(2)(c) of this section shall apply to proceedings initiated under this subsection. Revocation or suspension of a permit shall become final fifteen (15) days after delivery of the notice of intent to revoke or suspend unless the permitted party requests a hearing.

(c) Administrative Hearing Provisions.

(i) Upon a timely request by a permit holder for a hearing to review the director's action under subsection (A)(2)(b) of this section, the director shall promptly conduct a hearing open to the public. The contested case provisions of the Idaho administrative procedure act shall apply to all hearings conducted under this subsection.

(ii) The director shall have the authority to request from the district court in and for Ada county or any other appropriate district court the issuance of an order in the nature of a subpoena compelling the attendance and testimony of witnesses and the production before the director of papers, books, drawings, documents, test results, and other evidence relevant to a permit suspension or revocation investigation or adjudication.

(iii) After the hearing, the director shall issue a written opinion setting forth findings of fact, conclusions of law and an order. An aggrieved person subject to the director's order may seek its review as a final order in a district court as provided by the Idaho administrative procedure act. District court review of the director's decision shall be limited to the record developed before the director.

(3) CIVIL ENFORCEMENT ACTION. The attorney general may commence and prosecute in district court a civil enforcement action. 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 chapter or any rule, regulation, permit, condition, requirement, consent order, or order which has become effective pursuant

to this chapter. Such action may be brought to compel compliance with any provision of this chapter or with any rule, regulation, permit or order promulgated hereunder, and for any relief or remedies authorized in this chapter. The director shall not be required to initiate or prosecute an administrative action before the attorney general may commence and prosecute a civil enforcement action. In addition, the attorney general may delegate this authority regarding civil enforcement actions to the prosecuting attorney of the county where a civil enforcement action may arise.

(B) **ACTIONS AGAINST GUARANTORS.** If the owner or operator is in bankruptcy, reorganization or other arrangement pursuant to the federal bankruptcy code, or where jurisdiction cannot be obtained over an owner or operator likely to be solvent at the time of judgment, an action may be brought directly against a guarantor of financial responsibility by the state or any injured party for any claim arising from conduct for which guarantees of financial responsibility have been made. The guarantor may invoke all rights and defenses which would have been available to the owner or operator and all rights and defenses normally available to the guarantor.

(C) **LIMITATION OF ACTION FOR ADMINISTRATIVE AND CIVIL COURT PROCEEDINGS BROUGHT UNDER THE PROVISIONS OF THIS CHAPTER.** No civil or administrative proceeding may be brought to recover for a violation of this chapter or any permit, standard, regulation, condition, requirement 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. [I.C., § 39-4413, as added by 1983, ch. 154, § 1, p. 416; am. 1986, ch. 148, § 6, p. 415; am. 1988, ch. 259, § 3, p. 498; am. 1989, ch. 38, § 1, p. 49.]

Compiler's notes. The federal bankruptcy code referred to in subsection (B) of this section is compiled as 11 U.S.C., § 101 et seq.

Section 5 of S.L. 1986, ch. 148 is compiled as § 39-4411.

Section 2 of S.L. 1988, ch. 259 is compiled as § 39-4409.

Sec. to sec. ref. This section is referred to in §§ 39-4409, 39-4429.

39-4414. Remedies. — The remedies specified in this section are cumulative and nonexclusive.

(1) **MONETARY PENALTIES.**

(a) Any person who makes a false statement or representation in any application, label, manifest, record, report, permit or other document filed, maintained, or used for the purpose of complying with the provisions of this chapter shall be liable for a civil penalty not to exceed ten thousand dollars (\$10,000) for each separate violation or for each day of a continuing violation.

(b) Any person who violates this chapter or any permit, standard, regulation, condition, requirement, compliance agreement, or order issued or promulgated pursuant to this chapter shall be liable for a civil penalty not to exceed ten thousand dollars (\$10,000) for each separate violation or for each day of a continuing violation.

(c) 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, which relates to the violation or the objectives of the underlying statute which was violated, or which enhances the quality of the environment in the general geographic location where the violation occurred.

(2) **ASSESSMENT OF COSTS.** Any person who violates this chapter or any permit, standard, regulation, condition, requirement, compliance agreement, or order issued or promulgated pursuant to this chapter may be assessed for:

- (a) The state's costs for any nonroutine investigations, inspections, monitoring, or surveys which lead to evidence of the violation;
- (b) The state's costs, including the reasonable value of attorneys' services, for preparing and litigating the case;
- (c) The state's costs for mitigating, removing, correcting or terminating adverse effects upon soil, air, or water quality resulting from the violation;
- (d) The state's costs for impounding, storing, and disposing of contaminated property;
- (e) Compensation for damages to publicly held resources including but not limited to, land, water, recreational uses, wildlife, fish and aquatic life to restore the resource to its highest previous use;
- (f) Compensation for damages to privately held resources including, but not limited to, livestock, land, water, or other personal property, and compensation for court costs allowed by statute, reasonable attorney's fees for trial preparation and trial of the case, and all other reasonable costs of trial preparation and trial of the case;
- (g) Compensation for damages to personal health and compensation for court costs allowed by statute, reasonable attorney's fees for trial preparation and trial of the case, and all other reasonable costs of trial preparation and trial of the case;
- (h) The imposition or computation of costs may take into account the seriousness of the violation and good faith efforts to comply with the law.

(3) **RESTRAINING ORDERS, INJUNCTIONS AND OTHER RELIEF.**

(a) Any person who violates any provision of this chapter or any permit, standard, regulation, condition, requirement, compliance agreement, or order issued or promulgated pursuant to this chapter shall be subject to a permanent or temporary injunction, restraining order, or other relief deemed appropriate. Upon a showing to the court that a violation is causing an imminent hazard to the public health, the public safety, or to the environment, the department need not allege or prove at any stage of the proceeding that long-term irreparable damage will occur should the injunction or order not be issued or that the remedy at law is inadequate.

(b) A receiver may be appointed to oversee or operate any hazardous waste facility or site which is established or operated in violation of this chapter or any standard, regulation, condition, requirement, compliance agreement, or order issued or promulgated pursuant to this chapter.

(4) **PAYMENT TO HAZARDOUS WASTE EMERGENCY ACCOUNT.** All moneys collected by the department pursuant to subsections (1), (2) and (3) of this section to resolve any enforcement proceeding instituted under section 39-4413, Idaho Code, shall be paid into the hazardous waste emergency account created by section 39-4417, Idaho Code. [I.C., § 39-4414, as added by 1983, ch. 154, § 1, p. 416; am. 1984, ch. 157, § 1, p. 383; am. 1997, ch. 94, § 1, p. 219.]

Compiler's notes. Section 2 of S.L. 1997, ch. 94 is compiled as § 39-108.

39-4415. Violations constituting misdemeanors. — (1) Any person who knowingly makes any false statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained or used for the purpose of complying with the provisions of this chapter shall be guilty of a misdemeanor and subject to a fine of not more than ten thousand dollars (\$10,000) or to imprisonment not to exceed one (1) year, or to both, for each separate violation or for each day of a continuing violation.

(2) Any person who knowingly violates any provision of this chapter or any permit, standard, regulation, condition, requirement, compliance agreement, or order issued or promulgated pursuant to this chapter shall be guilty of a misdemeanor and subject to a fine of not more than ten thousand dollars (\$10,000) or to imprisonment not to exceed one (1) year, or to both, for each separate violation or for each day of a continuing violation.

(3) An action may be commenced and prosecuted by the attorney general. The director shall not be required to initiate or prosecute an administrative or civil action before the attorney general may commence and prosecute a criminal action. [I.C., § 39-4415, as added by 1983, ch. 154, § 1, p. 416; am. 1984, ch. 54, § 1, p. 94.]

39-4416. Citizen suits. — (1) Except as provided in subsection (2) of this section, any person who has been injured or damaged by an alleged violation of any permit, standard, regulation, condition, requirement, or order which has become effective pursuant to this chapter, may commence a civil action on that person's own behalf against any person alleged to have committed the violation. A person commencing an action under this section shall be required to file a bond or equivalent security in an amount not less than one thousand dollars (\$1,000) or in conformance with the requirements of rule 65(c) of the Idaho Rules of Civil Procedure if injunctive relief is sought.

(2) No action may be commenced under subsection (1) of this section if the department has commenced and is diligently prosecuting an administrative, civil, or criminal action to require compliance with the law. Further, no action may be commenced under subsection (1) of this section unless the

plaintiff has given the department sixty (60) days' notice and substantial evidence of the violation upon which the citizens' action is based. However, if the department commences an action in a court of the state of Idaho, any interested person may intervene as provided in rule 24(a) of the Idaho Rules of Civil Procedure.

(3) In any action under this section, the department may intervene as a matter of right.

(4) When issuing any final order in any action brought pursuant to this section, the court may award costs of litigation, including reasonable attorney and expert witness fees, to any prevailing party, whenever the court determines such an award is appropriate, except that the state of Idaho shall not be required to pay such costs in any citizen suit where the state has become a party.

(5) Nothing in this section shall restrict any right which a person, or class of persons, may have under any other statute or the common law. [I.C., § 39-4416, as added by 1983, ch. 154, § 1, p. 416; am. 1993, ch. 291, § 7, p. 1082.]

Compiler's notes. Sections 6 and 8 of S.L. 1993, ch. 291 are compiled as §§ 39-4411 and 39-4427, respectively.

39-4417. Hazardous waste emergency account. — (1) There is hereby created an account in the state treasury to be designated the hazardous waste emergency account.

(2) The account shall consist of moneys appropriated to the account by the legislature, moneys allotted to the account as a result of departmental compliance proceedings, moneys allotted to the account in a court ordered award or judgment, moneys allotted to the account in a court approved settlement, and moneys contributed to the account from other sources.

(3) Moneys in the account may be used by the director in the case of a hazardous waste emergency to pay the necessary costs of preventing, neutralizing, or mitigating any threat to the public health or safety, or to the environment caused by that emergency.

(4) The board may promulgate regulations for the withdrawal and use of funds from the account as specified in subsection (3) of this section.

(5) All moneys placed in the account are hereby perpetually appropriated to the department for the purposes described in subsection (3) of this section. All expenditures from the account shall be paid out in warrants drawn by the state controller upon presentation of the proper vouchers.

(6) Pending use, surplus moneys in the account shall be invested by the state treasurer in the same manner as provided under section 67-1210, Idaho Code. Interest earned on the investments shall be returned to the account. [I.C., § 39-4417, as added by 1975, ch. 180, § 2, p. 486; am. 1994, ch. 180, § 74, p. 420.]

Compiler's notes. Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the

amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on

November 8, 1994. Since such amendment was adopted, the amendment to this section by § 74 of S.L. 1994, ch. 180 became effective January 2, 1995.

Sections 73 and 75 of S.L. 1994, ch. 180 are

compiled as §§ 39-422 and 39-7110, respectively.

Sec. to sec. ref. This section is referred to in § 39-4414.

39-4417A. [Reserved.]

39-4417B. Hazardous waste management account. [Repealed.]

Compiler's notes. § 39-4417B, which comprised I.C., § 39-4417B, as added by 1984, ch. 205, § 3, p. 502; am. 1986, ch. 231, § 2, p. 627; am. 1997, ch. 313, § 1, p. 926, was repealed by S.L. 1999, ch. 290, § 1, p. 718, effective July 1, 1999.

39-4418. Local government notice. — A permit for a new hazardous waste land disposal facility or site shall not be issued until the department has given ninety (90) days' notice to the board of county commissioners of the county in which the proposed facility or site is to be located. [I.C., § 39-4418, as added by 1983, ch. 154, § 1, p. 416.]

39-4419. Interstate cooperation. — The director shall have the power and the duty to encourage cooperative activities between the department and other states for the improved management of hazardous wastes, and so far as is practical, to provide for uniform state regulations and for interstate agreements relating to hazardous waste management. The state may enter into such agreements with other states to accomplish the purposes as set out in this chapter. [I.C., § 39-4419, as added by 1983, ch. 154, § 1, p. 416.]

39-4420. Employment security. — (1) No employee of a hazardous waste generator, transporter or treatment, storage, or disposal facility or site shall be dismissed, suspended, or otherwise discriminated against because the employee testifies, provides information or otherwise assists in the enforcement or administration of the provisions of this chapter.

(2) Any employer who knowingly violates the provisions of subsection (1) of this section shall be liable for damages, costs and attorneys' fees, in addition to any other liability for relief authorized by this chapter, by any other statute, or by the common law. [I.C., § 39-4420, as added by 1983, ch. 154, § 1, p. 416.]

39-4421. Good samaritan protection. — (1) Notwithstanding any provision of law to the contrary, no person who provides assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened leakage, seepage, or other release of hazardous waste, or in preventing, cleaning up, or disposing of or in attempting to prevent, clean up or dispose of any such leakage, seepage or other release, shall be subject to civil liabilities or penalties of any type.

(2) The immunities provided in subsection (1) of this section above shall not apply to any person:

(a) Whose act or omission caused in whole or in part such actual or threatened leakage, seepage or other release and who would otherwise be liable therefor; or

(b) Who receives compensation other than reimbursement for out-of-pocket expenses for services in rendering such assistance or advice.

(3) Nothing in section (1) above shall be construed to limit or otherwise affect the liability of any person for damages resulting from such person's gross negligence, or from such person's reckless, wanton, or intentional misconduct. [I.C., § 39-4421, as added by 1983, ch. 154, § 1, p. 416.]

39-4422. Severability. — The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act. [I.C., § 39-4422, as added by 1983, ch. 154, § 1, p. 416.]

Compiler's notes. For words "this act" see Compiler's notes, § 39-4401.

39-4423. Disposal of restricted hazardous wastes prohibited. —

(1) Notwithstanding any other provision of law to the contrary, no person shall discharge, deposit, inject, dump, spill, leak, or place any restricted hazardous waste, as defined in section 39-4403, Idaho Code, into or on any land or water at a commercial hazardous waste facility or site.

(2) The department may issue a variance from the requirements of subsection (1) of this section, if, in the judgment of the director, application of the requirements would cause undue hardship and the granting of the variance would not be harmful to the public interest or inconsistent with RCRA requirements. In issuing the variance, the director shall take into account:

- (a) The long-term uncertainties associated with land disposal;
- (b) The goal of managing hazardous wastes in an appropriate manner in the first instance; and
- (c) The persistence, toxicity, mobility, and propensity to bioaccumulate of such hazardous wastes and their hazardous constituents.

(3)(a) The board shall promulgate rules and regulations specifying those levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.

(b) If such restricted hazardous waste has been treated to the level or by a method specified in regulations promulgated under this subsection, such waste or residue thereof shall not be subject to the prohibition in subsection (1) of this section and may be disposed of in a land disposal facility which meets the requirements of this chapter. [I.C., § 39-4423, as added by 1986, ch. 324, § 2, p. 794.]

Compiler's notes. Section 1 of S.L. 1986, ch. 324 is compiled as § 39-4403.

39-4424. Disposal of manifested waste. — Manifested waste, as that term is defined in section 39-4403, Idaho Code, shall only be treated, stored or disposed of in this state at a permitted hazardous waste treatment, storage or disposal facility unless the burning of such manifested waste to produce heat is otherwise lawful. [I.C., § 39-4424, as added by 1989, ch. 253, § 2, p. 626.]

Compiler's notes. Section 1 of S.L. 1989, ch. 253 is compiled as § 39-4403.

Section 3 of S.L. 1989, ch. 253 declared an emergency. Approved March 29, 1989.

39-4425. [Reserved.]

39-4426. Appointment of inspectors. — (1) The department of environmental quality shall assign a sufficient number of employees and equipment to inspect hazardous waste facilities or sites permitted under section 39-4409, Idaho Code, and located in Idaho where disposal of hazardous waste occurs for the purpose of assuring the protection of the health and safety of the public by monitoring the receipt and handling of hazardous wastes which have been transported by common carrier.

(2) All employees of the department designated pursuant to subsection (1) of this section shall alert proper authorities or peace officers regarding violations pursuant to this chapter, violations pursuant to title 49, Idaho Code, and violations to any rules issued pursuant to section 67-2901A, Idaho Code.

(3) All actions brought for violations of the provisions of this chapter or rules promulgated pursuant thereto shall be brought as provided for in this chapter. All actions brought for violations of the provisions of title 49, Idaho Code, shall be brought as provided in that title. [I.C., § 39-4426, as added by 1984, ch. 205, § 4, p. 502; am. 1986, ch. 231, § 3, p. 627; am. 1988, ch. 265, § 569, p. 549; am. 1999, ch. 383, § 1, p. 1051; am. 2001, ch. 103, § 46, p. 253.]

Compiler's notes. Section 3 of S.L. 1984, ch. 205 was repealed.

Section 4 of S.L. 1986, ch. 231 is compiled as § 49-2201 — 49-2212, and section 2 was repealed.

Sections 568 and 570 of S.L. 1988, ch. 265 are compiled as §§ 39-4410 and 40-701.

Section 2 of S.L. 1999, ch. 383, is compiled as § 40-510.

Sections 45 and 47 of S.L. 2001, ch. 103 are compiled as §§ 39-4403 and 39-4428, respectively.

Section 586 of S.L. 1987, ch. 265 provided that the act should become effective on and after January 1, 1989.

39-4427. Commercial disposal fees. — (1) There is imposed on the owner or operator of every commercial hazardous waste disposal facility or site permitted under section 39-4409, Idaho Code, the lowest applicable fee for each ton of waste or fraction thereof, as follows:

- (a) Thirty dollars (\$30.00) per gate ton or fraction thereof for all hazardous wastes as defined by RCRA or section 39-4407, Idaho Code;
- (b) Twenty-five dollars (\$25.00) per gate ton or fraction thereof for all manifested wastes not otherwise defined in this subsection;

(c) Twenty dollars (\$20.00) per gate ton or fraction thereof for the first two thousand five hundred (2,500) gate tons or less of wastes received by a facility or site in a calendar year from the same initial generator if the wastes: (i) are PCBs regulated under Idaho or federal law and are in concentrations greater than fifty (50) parts per million; (ii) are hazardous debris; (iii) are hazardous wastes that become subject to regulation solely as a result of a removal or remedial action taken in response to environmental contamination; or (iv) are hazardous wastes that result from corrective action or closure of a regulated or nonregulated hazardous waste management unit;

(d) Ten dollars (\$10.00) per gate ton or fraction thereof for all wastes contained in paragraph (c) of this subsection, if the wastes are received by the same facility or site and are from the same initial generator in an amount greater than two thousand five hundred (2,500) gate tons in the same calendar year;

(e) Five dollars (\$5.00) per gate ton or fraction thereof for all hazardous wastes that: (i) are delisted or treated so that the wastes are no longer hazardous wastes; or (ii) are nonhazardous radiologically contaminated wastes including materials from the "Formerly Utilized Sites Remedial Action Program (FUSRAP)" sites administered by the government of the United States; or (iii) are PCBs in concentrations less than fifty (50) parts per million and not otherwise regulated by Idaho or federal law; or (iv) are wastes not otherwise defined in this subsection.

(2) The fees set forth in subsection (1) of this section shall not apply to any of the following types of wastes:

(a) Wastes generated or disposed of by a public agency or other person operating a household hazardous waste collection program;

(b) Wastes generated or disposed of by any agency of the state of Idaho.

Any waste for which the fees are waived under the provisions of this section must be noted as fee-waived waste on the return required in section 39-4428, Idaho Code, and is subject to all audit provisions of section 39-4429, Idaho Code.

(3) For wastes disposed of by any agency of the state of Idaho at any commercial hazardous waste disposal facility or site permitted under section 39-4409, Idaho Code, the director, pursuant to a written agreement with the director, the owner or operator of any such facility or site, may credit on the return required in section 39-4428, Idaho Code, and in the fee remitted, an amount equal to the actual cost charged by such owner or operator per gate ton or fraction thereof for the characterization, collection, identification, transportation, treatment, storage and disposal of wastes at such facility or site. [I.C., § 39-4427, am. and redesi. 1999, ch. 290, § 2, p. 718; am. 2001, ch. 297, § 2, p. 1072; am. 2002, ch. 176, § 1, p. 522.]

Compiler's notes. Former § 39-4427, which comprised 1984, ch. 205, § 5, p. 502; am. 1992, ch. 251, § 1, p. 735; am. 1993, ch. 291, § 8, p. 1082; am. 1994, ch. 419, § 2, p. 1310; am. 1995, ch. 127, § 1, p. 856; am. 1997, ch. 313, § 2, p. 926; was amended and redesignate as § 39-4427A by S.L. 1998, ch. 229, § 1, p. 778.
This section was formerly compiled as § 39-4427A.
Section 3 of S.L. 2001, ch. 297, is compiled as § 39-4403.

Section 2 of S.L. 2002, ch. 354, is compiled as § 39-5909.

39-4427A. [Amended and Redesignated.]

Compiler's notes. Former § 39-4427A was amended and redesignated as § 39-4427 by S.L. 1999, ch. 290, § 2. This section was formerly compiled as § 39-4427A.

39-4427B — 39-4427D. Generator fees — Treatment, storage or disposal facility fee — Hazardous waste fees — Duplication. [Repealed.]

Compiler's notes. The following sections were repealed by S.L. 1999, ch. 290, § 1, p. 718, effective July 1, 1999:

Former section 39-4427B, which comprised S.L. 1998, ch. 229, § 2, p. 778, am. S.L. 1999, ch. 49, § 1, was amended by S.L. 1999, ch. 49, § 1, effective July 1, 1999 and was repealed by S.L. 1999, ch. 290, § 1, effective July 1, 1999.

39-4427C, which comprised S.L. 1998, ch. 229, § 3, p. 778, was repealed by S.L. 1999, ch. 290, § 1, effective July 1, 1999.

39-4427D, which comprised S.L. 1998, ch. 229, § 4, p. 778, was repealed by S.L. 1999, ch. 290, § 1, effective July 1, 1999.

Section 39-4427B as amended by S.L. 1999, ch. 49, § 1 read: "**Generator fees.** (1) For any generator generating waste during calendar year 1998, there is imposed a generator fee to be remitted to the department of health and welfare no later than thirty (30) days after the end of calendar year 1998, as follows:

"(a) A generator who generates two and two-tenths (2.2) pounds or more of acutely

hazardous waste as defined by 40 CFR section 261, in any calendar month, or generates more than two thousand two hundred (2,200) pounds of hazardous waste at any time in a calendar month, shall be subject to an annual fee of two thousand dollars (\$2,000);

"(b) A generator who generates between two hundred twenty (220) and two thousand two hundred (2,200) pounds of hazardous waste in one (1) calendar month, shall be subject to an annual fee of seven hundred fifty dollars (\$750).

"(2) The fee set forth in subsection (1) of this section shall not apply to generators who:

"(a) Are public or governmental entities;

"(b) Are dry cleaners; or

"(c) Demonstrate, to the satisfaction of the director of the department, an inability to pay all or a portion of the fee.

"(d) For purposes of this section, "dry cleaners" means any generator who owns or operates a business the primary purpose of which is to dry clean apparel and fabrics for the general public, as described in standard industrial classification no. 7216."

39-4427C. Treatment, storage or disposal facility fee. — (1) Any hazardous waste treatment, storage and disposal facility subject to regulation by the department of health and welfare during calendar year 1998, shall be subject to a five thousand dollar (\$5,000) fee to be remitted to the department of health and welfare no later than thirty (30) days after the end of calendar year 1998.

(2) The fee set forth in subsection (1) of this section shall not apply to facilities which:

(a) Are owned or operated by public or governmental entities; or

(b) Demonstrate, to the satisfaction of the director of the department, an inability to pay all or a portion of the fee. [I.C., § 39-4427C, as added by 1998, ch. 229, § 3, p. 778.]

Compiler's notes. Section 8 of S.L. 1998, ch. 229 declared an emergency. Approved March 20, 1998.

Sec. to sec. ref. This section is referred to in § 39-4427D.

39-4427D. Hazardous waste fees — Duplication. — (1) Any owner or operator, generator or treatment, storage or disposal facility subject to more than one (1) fee under section 39-4427A, 39-4427B or 39-4427C, Idaho Code, shall only be required to pay the highest applicable fee under any one (1) of those sections.

(2) For purposes of this section, the fee for section 39-4427A, Idaho Code, shall be the total amount required to be paid under subsection (1) of section 39-4427A, Idaho Code. [I.C., § 39-4427D, as added by 1998, ch. 229, § 4, p. 778.]

Compiler's notes. Section 8 of S.L. 1998, ch. 229 declared an emergency. Approved March 20, 1998.

39-4428. Collection of commercial disposal fees — Returns. — (1) The fees imposed under section 39-4427, Idaho Code, shall be due and payable in monthly installments by the owner, agent, employee, or operator of such hazardous waste facility or site and remittance shall be made to the Idaho department of environmental quality on or before the fifteenth day of the month next succeeding the end of the monthly period in which the fee accrued. The owner, operator or designated employee or agent of the hazardous waste facility or site, on or before the fifteenth day of the month, shall make out a return, upon such forms setting forth such information as the department may require, showing the amount of the fee for which the owner or operator of the hazardous waste facility or site is liable for the preceding monthly period, and shall sign and transmit the same to the department, together with a remittance for such amount in the form required.

(2) The department may relieve any person or class of persons from the obligation of filing monthly returns and may require the return to cover other reporting periods, but in no event shall returns be filed for a period greater than three (3) months. [I.C., § 39-4428, as added by 1984, ch. 205, § 6, p. 502; am. 1998, ch. 229, § 5, p. 778; am. 1999, ch. 290, § 3, p. 716; am. 2001, ch. 103, § 47, p. 253.]

Compiler's notes. Section 46 of S.L. 2001, ch. 103 is compiled as § 39-4426. emergency. Approved March 20, 1998.
Sec. to sec. ref. This section is referred to in § 39-4427.

39-4429. Books and records to be preserved — Entry and inspection by department of environmental quality. — Every person or entity subject to the imposition of the fees specified in section 39-4427, Idaho Code, shall keep complete and accurate records, including itemized invoices and manifests for federally regulated types and quantities of hazardous waste ultimately disposed of at a hazardous waste facility or site in Idaho. All books, documents and papers, computer tapes, discs, and other records required to be kept by this section shall be preserved for a period of at least five (5) years from the date of the records or the date of the entries appearing in the records, unless the department in writing, authorized their destruction or disposal at an earlier date. For purposes of this chapter, at any time

during usual business hours, the department or duly authorized agents or employees, may enter any place of business of the owner or operator of a hazardous waste facility or site where hazardous wastes are disposed and inspect the premises, the records required to be kept under this chapter, and the hazardous wastes or other chemicals contained therein, to determine whether or not all the applicable provisions of sections 39-4427 and 39-4428, Idaho Code, are being fully complied with. Trade secret information obtained by the department under the provisions of this section shall be treated in the same manner as such information obtained under section 39-4411, Idaho Code. If the department, or any of its authorized agents or employees is unreasonably denied free access or is unreasonably hindered or interfered with in making the examination of a hazardous waste facility or site, that hindrance or interference shall constitute grounds for suspension or revocation of the facility or site's permit by the director of the department of environmental quality under subsection (b) of section 39-4413, Idaho Code. [I.C., § 39-4429, as added by 1984, ch. 205, § 7, p. 502; am. 1998, ch. 229, § 6, p. 778; am. 1999, ch. 290, § 4, p. 718; am. 2001, ch. 103, § 48, p. 253.]

Compiler's notes. Section 7 of S.L. 1998, ch. 229 is compiled as § 39-4432.

Section 5 of S.L. 1999, ch. 290 is compiled as § 39-4431.

Section 49 of S.L. 2001, ch. 103 is compiled as § 39-4431.

Section 8 of S.L. 1998, ch. 229 declared an

emergency. Approved March 20, 1998.

"Water" and "Chemical" Distinguished.

The legislature has indicated by its use of the word "chemical" in several statutes that water should not be considered to be a "chemical." *Moosman v. Idaho Horse Racing Comm'n*, 117 Idaho 949, 793 P.2d 181 (1990).

39-4430. Additions and penalties. — The additions, penalties, and requirements provided by the Idaho income tax act, sections 63-3046, 63-3075, 63-3076 and 63-3077, Idaho Code, as they now exist or as they may be subsequently amended, shall apply in the same manner and to the same extent to this act as to the Idaho income tax act and shall cover such additions, penalties and requirements and shall, for this purpose, be described and be for acts, omissions, delinquencies, and requirements under this chapter. [I.C., § 39-4430, as added by 1984, ch. 205, § 8, p. 502.]

39-4431. Collection and enforcement. — (1) The collection and enforcement procedures available to the Idaho state tax commission provided by the Idaho income tax act, sections 63-3030A, 63-3038, 63-3039, 63-3040, 63-3042 through 63-3045A, 63-3047 through 63-3065A, 63-3068, 63-3070, 63-3071, 63-3072, 63-3073 and 63-3078, Idaho Code, as they now exist or as they may be subsequently be amended, shall apply and be available to the department of environmental quality for the enforcement of the commercial disposal fee and for the assessment and collection of any amounts due thereunder. Said sections shall, for the aforementioned purposes, be considered part of this chapter and wherever liens or any other proceedings are defined as income tax liens or proceedings, they shall, when applied in enforcement or collection under this chapter, be described as commercial disposal fee liens and proceedings.

(2) The department of environmental quality may be made a party defendant in any action at law or in equity by any person aggrieved by the unlawful seizure or sale of his property, or in any suit for refund or to recover an overpayment, but only the state of Idaho shall be responsible for any final judgment secured against the department of environmental quality and said judgment shall be paid or satisfied out of the general fund of the state. [I.C., § 39-4431, as added by 1984, ch. 205, § 9, p. 502; am. 1997, ch. 313, § 3, p. 926; am. 1999, ch. 290, § 5, p. 718; am. 2001, ch. 103, § 49, p. 253.]

Compiler's notes. Section 63-3070 referred to in this section was repealed by S.L. 1989, ch. 363, § 2.

Section 2 of S.L. 1997, ch. 313 is compiled as § 39-4427.

Section 4 of S.L. 1999, ch. 290, is compiled as § 39-4429.

Sections 48 and 50 of S.L. 2001, ch. 103 are compiled as §§ 39-4429 and 39-5803, respectively.

39-4432. Distribution of commercial disposal fee revenues. — The revenues received from the commercial disposal fees imposed by this chapter and any penalties, interest, or deficiency additions, shall be paid over to the state treasurer by the department to be distributed periodically but no less frequently than quarterly as follows:

(1) An amount equal to ninety-five percent (95%) shall be remitted to the general fund of the state; and

(2) An amount equal to the remaining five percent (5%) shall be remitted to the county treasurer of the county or counties where the activity occurred which caused the fees to be assessed pursuant to this chapter. Moneys shall be apportioned to the counties in the same proportional manner in which they were collected. Moneys returned to counties shall be utilized by the county to respond to health and environmental problems which may be caused by hazardous waste emergencies or spills, or improperly handled or packaged hazardous waste. [I.C., § 39-4432, as added by 1984, ch. 205, § 10, p. 502; am. 1989, ch. 419, § 1, p. 1023; am. 1997, ch. 313, § 4, p. 926; am. 1998, ch. 229, § 7, p. 778; am. 1999, ch. 290, § 6, p. 718.]

Compiler's notes. Section 11 of S.L. 1984, ch. 205 is compiled as § 67-2917.

Section 6 of S.L. 1998, ch. 229 is compiled as § 39-4429.

Section 14 of S.L. 1984, ch. 205 declared an

emergency. Approved April 3, 1984.

Section 8 of S.L. 1998, ch. 229 declared an emergency. Approved March 20, 1998.

Sec. to sec. ref. This section is referred to in § 39-7204.

CHAPTER 45

NATURAL DEATH ACT

SECTION.

39-4501. Short title.
39-4502. Statement of policy.
39-4503. Definitions.
39-4504. Living will.
39-4505. Durable power of attorney for health care.

SECTION.

39-4506. Revocation.
39-4507. Execution of directive.
39-4508. Immunity.
39-4509. General provisions.