

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 206

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO POULTRY; AMENDING TITLE 25, IDAHO CODE, BY THE ADDITION OF A  
2 NEW CHAPTER 40, TITLE 25, IDAHO CODE, TO PROVIDE FOR THE POULTRY ENVI-  
3 RONMENTAL ACT, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO PROVIDE  
4 FOR PERMITS AND TO PROVIDE FOR APPLICABILITY, TO PROVIDE FOR PERMIT  
5 APPLICATIONS, TO PROVIDE FOR THE REGISTRATION OF EXISTING FACILITIES,  
6 TO CLARIFY CONSTRUCTION OF SPECIFIED PROVISIONS, TO PROVIDE FOR THE  
7 SUBMISSION OF NUTRIENT MANAGEMENT PLANS, TO PROVIDE THAT APPLICATION  
8 FEES SHALL BE REQUIRED ONLY IN CERTAIN INSTANCES, TO REQUIRE PERMITS FOR  
9 CERTAIN EXPANSIONS OF OPERATIONS, TO PROVIDE FOR THE DESIGN AND CON-  
10 STRUCTION OF CERTAIN NEW AND MODIFIED WASTEWATER STORAGE AND CONTAIN-  
11 MENT FACILITIES, TO PROVIDE THAT THE REVIEW AND APPROVAL OF PLANS BY THE  
12 IDAHO DEPARTMENT OF AGRICULTURE SHALL SUPERSEDE THE IDAHO DEPARTMENT  
13 OF ENVIRONMENTAL QUALITY'S IMPLEMENTATION OF A PLAN AND SPECIFICATION  
14 REVIEW AND APPROVAL, TO PROVIDE THAT SPECIFIED DESIGN AND CONSTRUCTION  
15 SHALL BE CONSIDERED A BEST MANAGEMENT PRACTICE, TO PROVIDE FOR NUTRIENT  
16 MANAGEMENT PLANS AND TO PROVIDE FOR ANNUAL SOIL TESTS, TO PROVIDE FOR  
17 INSPECTIONS, TO PROVIDE FOR THE REVIEW AND COPYING OF REQUIRED RECORDS,  
18 TO PROVIDE FOR SAMPLING AND MONITORING OF CERTAIN SUBSTANCES OR PARAM-  
19 ETERS, TO PROVIDE FOR COMPLIANCE SCHEDULES AND MONITORING, TO PROVIDE  
20 FOR FEES AND ASSESSMENTS, TO PROVIDE FOR CREATION OF THE POULTRY INSPEC-  
21 TION FUND, TO PROVIDE FOR DESIGNATION OF POULTRY ANIMAL FEEDING OPER-  
22 ATIONS AS MEDIUM POULTRY CONCENTRATED ANIMAL FEEDING OPERATIONS UNDER  
23 CERTAIN CIRCUMSTANCES, TO PROVIDE FOR REDESIGNATION, TO AUTHORIZE  
24 RULEMAKING BY THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE, TO PROVIDE  
25 FOR VIOLATIONS, TO PROVIDE FOR THE REVOCATION OF PERMITS AND TO PROVIDE  
26 A PROCEDURE, TO PROVIDE FOR CIVIL PENALTIES AND TO PROVIDE FOR THE DE-  
27 POSIT OF MONEYS COLLECTED FOR VIOLATIONS INTO THE STATE TREASURY TO BE  
28 CREDITED TO THE STATE SCHOOL BUILDING FUND; AMENDING SECTION 25-3801,  
29 IDAHO CODE, TO REMOVE REFERENCE TO POULTRY OPERATIONS; AMENDING SECTION  
30 39-104A, IDAHO CODE, TO REMOVE REFERENCES TO POULTRY FEEDING OPERATIONS  
31 AND FACILITIES AND TO REVISE DEFINITIONS; AND DECLARING AN EMERGENCY.  
32

33 Be It Enacted by the Legislature of the State of Idaho:

34 SECTION 1. That Title 25, Idaho Code, be, and the same is hereby amended  
35 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-  
36 ter 40, Title 25, Idaho Code, and to read as follows:

37 CHAPTER 40  
38 POULTRY ENVIRONMENTAL ACT

39 25-4001. SHORT TITLE. This chapter shall be known as the "Poultry En-  
40 vironmental Act."

1 25-4002. DEFINITIONS. As used in this chapter:

2 (1) "Administrator" means the administrator, or his designee, for the  
3 animal industries division of the Idaho department of agriculture.

4 (2) "Animal feeding operation" or "AFO" means a lot or facility where  
5 the following conditions are met:

6 (a) Poultry have been, are, or will be confined and fed or maintained  
7 for a total of forty-five (45) days or more in any twelve (12) month pe-  
8 riod; and

9 (b) Crops, vegetation, forage growth or postharvest residues are not  
10 sustained in the normal growing season over any portion of the lot or fa-  
11 cility.

12 (3) "Animal waste" or "manure" means manure, bedding, compost and raw  
13 materials or other materials commingled with manure or set aside for dis-  
14 posal.

15 (4) "Best management practices" means practices, techniques or mea-  
16 sures which are determined to be reasonable precautions, are a cost-effec-  
17 tive and practicable means of preventing or reducing pollutants from point  
18 sources or nonpoint sources to a level compatible with environmental goals,  
19 including water quality goals and standards for waters of the state.

20 (5) "Concentrated animal feeding operation" or "CAFO" means an AFO that  
21 is defined as a large poultry CAFO or as a medium poultry CAFO by the terms  
22 of this chapter, or that is designated as a CAFO in accordance with section  
23 25-4011, Idaho Code. Two (2) or more AFOs under common ownership are consid-  
24 ered to be a single AFO for the purposes of determining the number of animals  
25 at an operation, if they adjoin each other or if they use a common area or sys-  
26 tem for the disposal of wastes.

27 (6) "Department" means the Idaho department of agriculture.

28 (7) "Director" means the director of the Idaho department of agricul-  
29 ture or his designee.

30 (8) "Land application" means the spreading on, or incorporation of, an-  
31 imal waste into the soil mantle primarily for beneficial purposes.

32 (9) "Land application area" means land under the control of an AFO owner  
33 or operator, whether it is owned, rented or leased, to which manure, litter  
34 or process wastewater from the production area is or may be applied.

35 (10) "Large poultry CAFO" means a poultry AFO that confines as many or  
36 more than the number of poultry specified in the following categories:

37 (a) Fifty-five thousand (55,000) turkeys;

38 (b) Thirty thousand (30,000) laying hens or broilers, if the AFO uses a  
39 liquid manure handling system;

40 (c) One hundred twenty-five thousand (125,000) chickens, other than  
41 laying hens, if the AFO uses other than a liquid manure handling system;

42 (d) Eighty-two thousand (82,000) laying hens, if the AFO uses other  
43 than a liquid manure handling system;

44 (e) Thirty thousand (30,000) ducks, if the AFO uses other than a liquid  
45 manure handling system; or

46 (f) Five thousand (5,000) ducks, if the AFO uses a liquid manure han-  
47 dling system.

48 (11) "Medium poultry CAFO" means any poultry AFO which confines:

49 (a) Sixteen thousand five hundred (16,500) to fifty-four thousand nine  
50 hundred ninety-nine (54,999) turkeys;

1 (b) Nine thousand (9,000) to twenty-nine thousand nine hundred ninety-  
2 nine (29,999) laying hens or broilers, if the AFO uses a liquid manure  
3 handling system;

4 (c) Thirty-seven thousand five hundred (37,500) to one hundred twenty-  
5 four thousand nine hundred ninety-nine (124,999) chickens, other than  
6 laying hens, if the AFO uses other than a liquid manure handling system;

7 (d) Twenty-five thousand (25,000) to eighty-one thousand nine hundred  
8 ninety-nine (81,999) laying hens, if the AFO uses other than a liquid  
9 manure handling system;

10 (e) Ten thousand (10,000) to twenty-nine thousand nine hundred ninety-  
11 nine (29,999) ducks, if the AFO uses other than a liquid manure handling  
12 system; or

13 (f) One thousand five hundred (1,500) to four thousand nine hundred  
14 ninety-nine (4,999) ducks, if the AFO uses a liquid manure handling sys-  
15 tem.

16 (12) "Modification" or "modified" means structural changes and alter-  
17 ations to the wastewater storage containment facility which would require  
18 increased storage or containment capacity or such changes which would alter  
19 the function of the wastewater storage containment facility.

20 (13) "Noncompliance" means a practice or condition that causes an unau-  
21 thorized discharge, or a practice or condition, that if left uncorrected,  
22 will cause an unauthorized discharge, or a condition on the poultry CAFO that  
23 does not meet the requirements of the nutrient management standard, nutrient  
24 management plan, and 2004 American society of agricultural and biological  
25 engineers (ASABE) construction standard for waste containment systems.

26 (14) "Nutrient management plan" means a plan prepared in conformance  
27 with the nutrient management standard, provisions required by 40 CFR  
28 122.42(e) (1), or other equally protective standard for managing the amount,  
29 placement, form and timing of the land application of nutrients and soil  
30 amendments.

31 (15) "Nutrient management standard" means the 2007 publication by the  
32 United States department of agriculture, natural resources conservation  
33 service, conservation practice standard, nutrient management code 590 or  
34 other equally protective standard approved by the director.

35 (16) "Person" means any individual, association, partnership, firm,  
36 joint stock company, joint venture, trust, estate, political subdivision,  
37 public or private corporation, state or federal governmental department,  
38 agency or instrumentality, or any legal entity, that is recognized by law as  
39 the subject of rights and duties.

40 (17) "Poultry" means chickens, turkeys, ducks, geese and any other bird  
41 raised in captivity.

42 (18) "Process wastewater" means water directly or indirectly used in  
43 the operation of the AFO for any or all of the following: spillage or over-  
44 flow from animal or poultry watering systems; washing, cleaning or flushing  
45 pens, barns, manure pits or other AFO facilities; direct contact swimming,  
46 washing or spray cooling of animals; or dust control. Process wastewater  
47 also includes any water which comes into contact with any raw materials,  
48 products or byproducts including manure, litter, feed, milk, eggs or bed-  
49 ding.

1 (19) "Production area" means that part of an AFO that includes the an-  
2 imal confinement area, the manure storage area, the raw materials storage  
3 area and the waste containment area. The animal confinement area includes,  
4 but is not limited to, open lots, housed lots, feedlots, confinement houses,  
5 barnyards and animal walkways. The manure storage area includes, but is not  
6 limited to, lagoons, runoff ponds, storage sheds, stockpiles, under house  
7 or pit storages, liquid impoundments, static piles and composting piles.  
8 The raw materials storage area includes, but is not limited to, feed silos,  
9 silage bunkers and bedding materials. The waste containment area includes,  
10 but is not limited to, settling basins and areas within berms and diversions  
11 which separate uncontaminated storm water. Also included in the definition  
12 of "production area" is any egg washing or egg processing facility, and any  
13 area used in the storage, handling, treatment or disposal of mortalities.

14 (20) "Unauthorized discharge" means a discharge of process wastewater  
15 or manure to state surface waters that is not authorized by an NPDES permit or  
16 the release of process wastewater or manure to waters of the state that does  
17 not meet the requirements of this chapter.

18 (21) "Wastewater storage and containment facilities" means the portion  
19 of an AFO where manure or process wastewater is stored or collected. This may  
20 include corrals, feeding areas, waste collection systems, waste conveyance  
21 systems, waste storage ponds, waste treatment lagoons and evaporative  
22 ponds.

23 (22) "Waters of the state" means all accumulations of water, surface and  
24 underground, natural and artificial, public and private, or parts thereof  
25 which are wholly or partially within, which flow through or border upon the  
26 state.

27 25-4003. PERMIT REQUIRED. (1) No person shall construct, operate or  
28 expand a poultry CAFO of any size without first obtaining a permit issued by  
29 the director.

30 (2) Two (2) or more poultry CAFOs under common control of the same per-  
31 son may be considered, for purposes of permitting, to be a single facility,  
32 even though separately their capacity is less than a large or medium poultry  
33 CAFO, if they use a common animal waste management system or land application  
34 site.

35 (3) The provisions of this section shall be applicable only to those  
36 poultry CAFOs constructed or modified after the effective date of this chap-  
37 ter.

38 25-4004. PERMIT APPLICATION. (1) Every person who is required to ob-  
39 tain a permit under this chapter shall submit a permit application to the  
40 department prior to facility operation or expansion. A permit application  
41 will be used to determine if the construction and operation plans of a large  
42 or medium poultry CAFO will be in conformance with the provisions of this  
43 chapter.

44 (2) Each application shall include information in sufficient detail to  
45 allow the director to make necessary application review decisions concern-  
46 ing design and environmental protection. In accordance with the provisions  
47 of section 25-4012, Idaho Code, the director is authorized to promulgate  
48 rules to designate the contents of a permit application.

1           25-4005. EXISTING FACILITIES. (1) Existing large and medium poultry  
2 CAFO owners shall register with the department no later than January 1, 2012,  
3 upon forms created by the department. None of the provisions in this section  
4 shall be construed to deny an existing operation the opportunity to apply for  
5 and receive a permit under this chapter.

6           (2) Existing large and medium poultry CAFOs shall submit a nutrient  
7 management plan to the director for approval within one (1) year of the  
8 effective date of this chapter. An application fee shall not be required  
9 unless the CAFO is expanding.

10          (3) The owner of an existing poultry operation shall not increase the  
11 one-time animal capacity of the operation by ten percent (10%) or more with-  
12 out first obtaining a permit for the expansion as required by the provisions  
13 of this chapter. The ten percent (10%) increase is measured cumulatively  
14 from the original effective date of this chapter or the date the owner first  
15 obtained a permit.

16          25-4006. DESIGN AND CONSTRUCTION. Each new or modified large and  
17 medium CAFO shall design and construct all new and modified wastewater stor-  
18 age and containment facilities in accordance with the engineering standards  
19 and specifications provided by the natural resource conservation service  
20 or the American society of agricultural and biological engineers (ASABE)  
21 or other equally protective standard approved by the director. The de-  
22 partment's review and approval of plans under this section shall supersede  
23 the Idaho department of environmental quality's implementation of plan  
24 and specification review and approval provided pursuant to section 39-118,  
25 Idaho Code. Such design and construction shall be considered a best manage-  
26 ment practice.

27          25-4007. NUTRIENT MANAGEMENT PLANS. (1) All permitted CAFOs shall  
28 have and implement a nutrient management plan that has been reviewed and  
29 approved by the department.

30          (2) Nutrient management plans shall be amended if modifications to the  
31 CAFO, as outlined in the nutrient management standard or other conditions,  
32 warrant the amendment.

33          (3) Annual soil tests shall be conducted on all land application sites  
34 owned or leased by the permittee every year to determine compliance with the  
35 nutrient management plan and nutrient management standard. The director may  
36 require more frequent soil tests if deemed necessary.

37          25-4008. INSPECTIONS. The director or his designee in the division of  
38 animal industries is authorized to enter and inspect any AFO and have access  
39 to or copy any facility records deemed necessary to ensure compliance with  
40 the provisions of this chapter. The director shall comply with the biosecu-  
41 rity protocol of the AFO so long as the protocol does not inhibit reasonable  
42 access to:

43          (1) Enter and inspect, at reasonable times, the premises or land appli-  
44 cation site or sites of an AFO;

45          (2) Review and copy, at reasonable times, any records that must be kept  
46 under conditions of this chapter;

1 (3) Sample or monitor, at reasonable times, substances or parameters  
2 directly related to compliance with this chapter.

3 25-4009. COMPLIANCE SCHEDULES AND MONITORING. (1) Compliance sched-  
4 ule. The director may establish a compliance schedule for facilities as part  
5 of the permit conditions including:

6 (a) Specific steps or actions to be taken by the permittee to achieve  
7 compliance with applicable requirements or permit conditions; and

8 (b) Dates by which those steps or actions are to be taken.

9 (2) Monitoring requirements. Any facility may be subject to monitoring  
10 requirements including, but not limited to, the following:

11 (a) The type, installation, use and maintenance of monitoring equip-  
12 ment;

13 (b) Monitoring or sampling methodology, frequency and locations;

14 (c) Monitored substances or parameters;

15 (d) Testing and analytical procedures; and

16 (e) Reporting requirements including both frequency and form.

17 25-4010. FEES AND ASSESSMENTS TO BE COLLECTED. (1) The department may  
18 levy a fee or assessment against the permit holder for the purpose of carry-  
19 ing out the provisions of this chapter and rules promulgated hereunder.

20 (2) Fees or assessments collected shall be used for costs related to the  
21 implementation of the provisions of this chapter.

22 (3) Fees or assessments shall be levied on a uniform basis in an amount  
23 reasonably necessary to cover the cost of the inspection program and the ad-  
24 ministration of the department of agriculture poultry program. The depart-  
25 ment shall adjust the fees to be collected under this section as necessary to  
26 meet the expenses of the inspections.

27 (4) The annual fees or assessments shall be based on the square footage  
28 of the confinement area. Such fees or assessments may not exceed three cents  
29 (3¢) per square foot.

30 (5) All fees and assessments collected or received by the department  
31 under this chapter shall be deposited in the "poultry inspection fund,"  
32 which fund is hereby created in the state treasury. All moneys coming into  
33 the poultry inspection fund are hereby appropriated to the department of  
34 agriculture to be used in the inspections required under this chapter.

35 (6) The fees and assessments accrued in any given year are due and  
36 payable no later than January 20 of the following year.

37 (7) Fees and assessments for new or expanded operations shall be pro-  
38 rated for each month of operation.

39 25-4011. DESIGNATION. (1) The director may, on a case by case basis,  
40 designate a poultry AFO as a medium poultry CAFO if it is determined that  
41 the AFO is a significant contributor of pollutants to waters of the state.  
42 The designated medium poultry CAFO will be required to follow all permit re-  
43 quirements for a medium poultry CAFO.

44 (2) The designation shall be provided to the operator of the poultry AFO  
45 in writing, setting forth the basis for the director's decision.

46 (3) The director shall consider the following factors when deciding  
47 whether to designate a poultry AFO:

1 (a) Size of the poultry AFO and the amount of manure, process wastewater  
2 and runoff reaching waters of the state;

3 (b) Location of the poultry AFO relative to waters of the state;

4 (c) Means of conveyance of manure, process wastewater and runoff into  
5 waters of the state;

6 (d) Slope, vegetation, precipitation and other factors affecting the  
7 likelihood or frequency of discharge of manure, process wastewater or  
8 runoff into waters of the state;

9 (e) Unauthorized discharges into waters of the state through a man-made  
10 ditch, flushing system or other similar man-made device;

11 (f) Unauthorized discharges directly into waters of the state that  
12 originate outside of and pass over, across or through the facility or  
13 otherwise come into direct contact with the animals confined in the AFO;  
14 and

15 (g) Repeated instances of noncompliance.

16 (4) Upon request by the operator, the director shall redesignate a fa-  
17 cility previously designated under subsection (1) of this section if the fa-  
18 cility is no longer a significant contributor of pollution to waters of the  
19 state. Such redesignation shall be provided to the operator in writing and  
20 any fees or assessments paid by the operation due to the designation will not  
21 be refundable to the operation.

22 25-4012. AUTHORITY TO PROMULGATE RULES. (1) The legislature finds  
23 that poultry AFOs require adequate control through state regulatory mecha-  
24 nisms in order to prevent such operations from posing a threat to the state's  
25 water resources. The department of agriculture is in the best position to  
26 administer and implement rules to provide an adequate regulatory framework  
27 for poultry feeding operations.

28 (2) The director is authorized to modify the department's administra-  
29 tive rules and to make new rules for permitting and regulating poultry AFOs.  
30 Such regulations may include, but are not limited to, the information re-  
31 quired on a permit application and the conditions for the issuance and main-  
32 tenance of a permit, as the director deems necessary.

33 Nothing in this chapter prohibits the board of county commissioners  
34 of any county from adopting regulations that are more stringent than those  
35 adopted by the state.

36 25-4013. VIOLATIONS. (1) The failure by a permittee to comply with the  
37 provisions of this chapter, rules promulgated hereunder, or with any permit  
38 condition shall be deemed a violation.

39 (2) Any person who knowingly makes a false statement, representation,  
40 or certification in any application report, document, or record developed,  
41 maintained, or submitted pursuant to these rules or the conditions of a per-  
42 mit shall be deemed to have violated the provisions of this chapter.

43 (3) Any unauthorized discharge from a poultry AFO shall be deemed a vio-  
44 lation.

45 (4) Any person violating any provision of this chapter, the rules pro-  
46 mulgated hereunder or any permit or order issued hereunder shall be liable  
47 for a civil penalty as set forth in section 25-4014, Idaho Code.

48 (5) The director may revoke a permit for:

- 1 (a) A material violation of any condition of a permit; or  
 2 (b) If the permit was obtained by misrepresentation or failure to dis-  
 3 close all relevant facts.  
 4 (6) Prior to revoking a permit, the director shall issue a notice of  
 5 intent to revoke, which shall become final unless the permittee timely re-  
 6 quests, in writing, an administrative hearing. Such hearing shall be con-  
 7 ducted in accordance with the provisions of chapter 52, title 67, Idaho Code.

8 25-4014. PENALTY FOR VIOLATIONS. Whoever shall violate any of the pro-  
 9 visions of this chapter or the rules promulgated hereunder:

10 (1) May be assessed a civil penalty by the department or its duly autho-  
 11 rized agent of not more than ten thousand dollars (\$10,000) for each offense.

12 (2) Assessment of a civil penalty may be made in conjunction with any  
 13 other department administrative action.

14 (3) No civil penalty may be assessed unless the person, corporation,  
 15 cooperative or company charged is given notice and opportunity for a hearing  
 16 pursuant to the Idaho administrative procedure act.

17 (4) If the department is unable to collect an assessed civil penalty, or  
 18 if a person fails to pay all or a set portion of an assessed civil penalty as  
 19 determined by the department, the department may file an action to recover  
 20 the civil penalty in the district court of the county in which the violation  
 21 is alleged to have occurred. In addition to the assessed penalty, the de-  
 22 partment shall be entitled to recover reasonable attorney's fees and costs  
 23 incurred in such action or on appeal from such action.

24 (5) Any person against whom the department has assessed a civil penalty  
 25 under the provisions of this section may, within twenty-eight (28) days of  
 26 the final action by the agency making the assessment, appeal the assessment  
 27 to the district court of the county in which the violation is alleged by the  
 28 department to have occurred.

29 (6) Moneys collected for violations pursuant to the provisions of this  
 30 section shall be deposited in the state treasury and credited to the state  
 31 school building fund.

32 (7) Nothing in this chapter shall be construed as requiring the direc-  
 33 tor to report minor violations for prosecution when he believes that the pub-  
 34 lic interest will be best served by suitable warnings or other administra-  
 35 tive action.

36 SECTION 2. That Section 25-3801, Idaho Code, be, and the same is hereby  
 37 amended to read as follows:

38 25-3801. DECLARATION OF POLICY AND STATEMENT OF LEGISLATIVE IN-  
 39 TENT. (1) The agriculture industry is a vital component of Idaho's economy  
 40 and during the normal course of producing the food and fiber required by  
 41 Idaho and our nation, odors are generated. It is the intent of the legis-  
 42 lature to manage these odors when they are generated at a level in excess  
 43 of those odors normally associated with accepted agricultural practices in  
 44 Idaho.

45 (2) Large swine ~~and poultry~~ operations are addressing odor management  
 46 through chapter 1, title 39, Idaho Code, and the department of environmental  
 47 quality's rules regulating large swine ~~and poultry~~ operations, and the beef  
 48 cattle industry will address odor management as needed through implementa-



1 tion of the beef cattle environmental control act as provided for in chapter  
2 49, title 22, Idaho Code, and rules promulgated thereunder.

3 (3) The Idaho department of agriculture is hereby authorized as the  
4 lead agency to administer and implement the provisions of this chapter. In  
5 carrying out the provisions of this chapter, the department will make rea-  
6 sonable efforts to ensure that any requirements imposed upon agricultural  
7 operations are cost-effective and economically, environmentally and tech-  
8 nologically feasible.

9 SECTION 3. That Section 39-104A, Idaho Code, be, and the same is hereby  
10 amended to read as follows:

11 39-104A. AUTHORITY TO MAKE RULES REGULATING LARGE SWINE AND ~~POULTRY~~  
12 FEEDING OPERATIONS -- FINANCIAL ASSURANCES. (1) The state of Idaho is expe-  
13 riencing the development of large swine ~~and poultry~~ feeding operations which  
14 are inadequately controlled through existing state regulatory mechanisms.  
15 If not properly regulated, these facilities pose a threat to the state's  
16 surface and ground water resources. Due to existing rulemaking authority,  
17 the department of environmental quality is in the best position of all state  
18 agencies to modify its present rules and to make new rules to develop an ade-  
19 quate regulatory framework for large swine ~~and poultry~~ feeding operations.

20 (2) The department of environmental quality is authorized to modify its  
21 existing administrative rules and to make new rules regulating large swine  
22 ~~and poultry~~ feeding operations, as they shall be defined by the department.  
23 The department is authorized to work with the Idaho department of agricul-  
24 ture in the development of such rules.

25 (3) Owners and operators of swine ~~and poultry~~ facilities required to  
26 obtain a permit from the department of environmental quality to construct,  
27 operate, expand or close the facilities shall provide financial assurances  
28 demonstrating financial capability to meet requirements for operation and  
29 closure of the facilities and remediation. Requirements for financial as-  
30 surances shall be determined by the agency as set forth in rule. Financial  
31 assurances may include any mechanism or combination of mechanisms meeting  
32 the requirements established by agency rule including, but not limited to,  
33 surety bonds, trust funds, irrevocable letters of credit, insurance and cor-  
34 porate guarantees. The mechanism(s) used to demonstrate financial capabil-  
35 ity must be legally valid, binding and enforceable under applicable law and  
36 must ensure that the funds necessary to meet the costs of closure and remedi-  
37 ation will be available whenever the funds are needed. The director may re-  
38 tain financial assurances for up to five (5) years after closure of a facil-  
39 ity to ensure proper closure and remediation, as defined by rule.

40 (4) Those swine facilities described in section 39-7905, Idaho Code,  
41 shall meet the requirements of section 39-7907, Idaho Code, in addition to  
42 the requirements of this chapter and the department of environmental qual-  
43 ity's rules regulating swine ~~and poultry~~ facilities, prior to the issuance  
44 of a final permit by the director. The director shall require that swine fa-  
45 cilities be constructed in a phased manner over a period of time and that no  
46 additional facilities be constructed until the director approves the asso-  
47 ciated waste treatment system. ~~The director may require that poultry facil-~~  
48 ~~ities be constructed in a phased manner over a period of time and that no ad-~~

1 ~~ditional facilities be constructed until the director approves the associ-~~  
2 ~~ated waste treatment system.~~

3 (5) Nothing in this section prohibits the boards of county commission-  
4 ers of any county or the governing body of any city from adopting regulations  
5 that are more stringent or that require greater financial assurances than  
6 those imposed by the department of environmental quality. A board of county  
7 commissioners of a county or a governing body of a city in which a swine ~~or~~  
8 ~~poultry~~ facility is located may choose to determine whether the facility is  
9 properly closed according to imposed standards or may leave that determina-  
10 tion to the department. This choice shall be communicated to the director  
11 in writing when closure begins; provided that determinations of closure by  
12 a board of county commissioners of a county or a governing body of a city in  
13 which the swine ~~or poultry~~ facility is located shall not permit closure under  
14 less stringent requirements than those imposed by the department.

15 (6) As used in this section:

16 (a) "Animal unit" means a unit equaling two and one-half (2.5)  
17 swine, each weighing over twenty-five (25) kilograms (approximately  
18 fifty-five (55) pounds), or ten (10) weaned swine, each weighing under  
19 twenty-five (25) kilograms, ~~or one hundred (100) poultry~~. Total ani-  
20 mal units are calculated by adding the number of swine weighing over  
21 twenty-five (25) kilograms multiplied by four-tenths (.4) plus the  
22 number of weaned swine weighing under twenty-five (25) kilograms mul-  
23 tiplied by one-tenth (.1) ~~plus the number of poultry multiplied by one~~  
24 ~~one-hundredth (.01)~~.

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

30 (c) "Large swine ~~and poultry~~ feeding operations" means swine facili-  
31 ties ~~and poultry facilities~~ having a one-time animal unit capacity of  
32 two thousand (2,000) or more animal units.

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

35 SECTION 4. An emergency existing therefor, which emergency is hereby  
36 declared to exist, this act shall be in full force and effect on and after its  
37 passage and approval.