

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 367

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

1 RELATING TO PHOSPHOGYPSUM; AMENDING CHAPTER 1, TITLE 39, IDAHO CODE, BY THE
2 ADDITION OF A NEW SECTION 39-176A, IDAHO CODE, TO PROVIDE LEGISLATIVE
3 FINDINGS AND PURPOSE; AMENDING CHAPTER 1, TITLE 39, IDAHO CODE, BY THE
4 ADDITION OF A NEW SECTION 39-176B, IDAHO CODE, TO PROVIDE FOR SCOPE
5 AND APPLICABILITY; AMENDING CHAPTER 1, TITLE 39, IDAHO CODE, BY THE
6 ADDITION OF A NEW SECTION 39-176C, IDAHO CODE, TO DEFINE TERMS; AMEND-
7 ING CHAPTER 1, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION
8 39-176D, IDAHO CODE, TO PROVIDE FOR THE POWER OF THE BOARD; AMEND-
9 ING CHAPTER 1, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION
10 39-176E, IDAHO CODE, TO PROVIDE CONSTRUCTION REQUIREMENTS FOR CERTAIN
11 PHOSPHOGYPSUM STACKS; AND AMENDING CHAPTER 1, TITLE 39, IDAHO CODE, BY
12 THE ADDITION OF A NEW SECTION 39-176F, IDAHO CODE, TO PROVIDE FOR DESIGN
13 AND CONSTRUCTION PLANS.
14

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

16 SECTION 1. That Chapter 1, Title 39, Idaho Code, be, and the same is
17 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
18 ignated as Section 39-176A, Idaho Code, and to read as follows:

19 39-176A. LEGISLATIVE FINDINGS AND PURPOSE. (1) The legislature finds
20 that:

21 (a) A domestic supply of phosphate fertilizers is critical to our na-
22 tion's food security and Idaho's agricultural economy;

23 (b) The production of phosphoric acid is a key ingredient in phosphate
24 fertilizers and, given Idaho's rich supply of phosphate rock, the state
25 is home to phosphoric acid production facilities;

26 (c) Phosphogypsum is a calcium sulfate by-product produced by the reac-
27 tion of sulfuric acid with phosphate rock to produce phosphoric acid and
28 is disposed of and placed in phosphogypsum stacks near phosphoric acid
29 production facilities;

30 (d) The United States congress and the environmental protection agency
31 exempted certain high-volume, low-toxicity solid wastes, including
32 phosphogypsum and process water from phosphoric acid production, from
33 regulation as a hazardous waste under subtitle C of the resource conser-
34 vation and recovery act (42 U.S.C. 6901 et seq.), as amended; and

35 (e) To both facilitate and encourage the continued manufacturing of
36 phosphate fertilizers, and to benefit the surface water and groundwater
37 environmental resources, the legislature recognizes the need for the
38 department of environmental quality to develop a program to assure the
39 proper design and construction of phosphogypsum stacks and phosphogyp-
40 sum stack systems.

1 (2) Therefore, it is the intent of the legislature to authorize the
2 board of environmental quality to initiate negotiated rulemaking consistent
3 with the requirements of sections 39-176A through 39-176F, Idaho Code.

4 SECTION 2. That Chapter 1, Title 39, Idaho Code, be, and the same is
5 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
6 ignated as Section 39-176B, Idaho Code, and to read as follows:

7 39-176B. SCOPE AND APPLICABILITY. (1) Nothing in this chapter shall
8 be construed as superseding, amending, or modifying the mineral processing
9 waste exemption provided in 40 CFR 261.4(b) (7) and IDAPA 58.01.05.005, for
10 process wastewater and phosphogypsum from phosphoric acid production.

11 (2) Nothing in this chapter is intended to supersede or modify any ex-
12 isting agreement with or approvals from the environmental protection agency
13 or the department of environmental quality relating to the construction of a
14 phosphogypsum stack, phosphogypsum stack system, or component thereof.

15 (3) The requirements in sections 42-1710 through 42-1721, Idaho Code,
16 shall not apply to phosphogypsum stacks and phosphogypsum stack systems.

17 (4) This chapter establishes minimum design and construction require-
18 ments to ensure that phosphogypsum stack system impoundments meet critical
19 safety standards and do not cause unplanned releases into the environment.

20 SECTION 3. That Chapter 1, Title 39, Idaho Code, be, and the same is
21 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
22 ignated as Section 39-176C, Idaho Code, and to read as follows:

23 39-176C. DEFINITIONS. Wherever used or referred to in sections
24 39-176A through 39-176F, Idaho Code, unless a different meaning clearly
25 appears from the context:

26 (1) "Auxiliary holding pond" (AHP) means a lined storage pond typically
27 used to hold process wastewater for the purpose of increasing system storage
28 above that otherwise provided by a collection pond or ponds.

29 (2) "Board" means the Idaho board of environmental quality.

30 (3) "Lateral expansion" means a horizontal expansion of the waste
31 boundaries of an existing phosphogypsum stack system.

32 (4) "Leachate" means liquid or drainable pore water that has passed
33 through or emerged from phosphogypsum and that may be collected within the
34 phosphogypsum stack system or in a seepage collection drain.

35 (5) "Operator" means any person or persons, any partnership, limited
36 partnership, corporation, or any association of persons, either natural or
37 artificial, that own, control, or direct the management of a phosphogypsum
38 stack.

39 (6) "Phosphogypsum" means calcium sulfate and by-products produced by
40 the reaction of an acid, such as sulfuric acid or fluoride acid, with phos-
41 phate rock to produce phosphoric acid.

42 (7) "Phosphogypsum stack" means any defined geographic area asso-
43 ciated with a phosphoric acid production facility in which phosphogypsum
44 and process wastewater from phosphoric acid production are disposed of or
45 stored, other than within a fully enclosed building, container, or tank.

46 (8) "Phosphogypsum stack system" means the defined geographic area
47 associated with the phosphoric acid production facility in which phospho-

1 gypsum and process wastewater are disposed of or stored together, including
2 all components such as pumps, piping, ditches, drainage, conveyances, water
3 control structures, collection ponds, cooling ponds, decant ponds, surge
4 ponds, auxiliary holding ponds, and any other collection or conveyance sys-
5 tem associated with the transport of phosphogypsum from the plant to the
6 phosphogypsum stack, its management at the stack, and the process wastewa-
7 ter return to phosphoric acid production to the phosphogypsum stack. This
8 includes toe drain systems and ditches and other leachate collection sys-
9 tems, but does not include conveyances within the confines of the fertilizer
10 production plant or emergency diversion impoundments used in emergency cir-
11 cumstances caused by power outages or rainfall events.

12 (9) "Process wastewater" means process wastewater from phosphoric acid
13 production operations.

14 SECTION 4. That Chapter 1, Title 39, Idaho Code, be, and the same is
15 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
16 ignated as Section 39-176D, Idaho Code, and to read as follows:

17 39-176D. BOARD POWERS. In addition to the other duties and powers
18 of the board prescribed by law, the board is granted and shall be entitled
19 to proceed with negotiated rulemaking and adopt rules consistent with the
20 requirements of sections 39-176A through 39-176F, Idaho Code, regarding
21 the construction and lateral expansion and the management of phosphogyp-
22 sum stacks and phosphogypsum stack systems and other such rules as may be
23 necessary to carry out the intent and purposes of sections 39-176A through
24 39-176F, Idaho Code.

25 SECTION 5. That Chapter 1, Title 39, Idaho Code, be, and the same is
26 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
27 ignated as Section 39-176E, Idaho Code, and to read as follows:

28 39-176E. CONSTRUCTION REQUIREMENTS FOR NEW PHOSPHOGYPSUM STACKS --
29 LATERAL EXPANSIONS OF EXISTING PHOSPHOGYPSUM STACKS. Any operator desiring
30 to construct a new phosphogypsum stack, a material component thereof, or
31 a lateral expansion shall submit to the department of environmental qual-
32 ity for review and approval prior to commencing construction a design and
33 construction plan, including construction quality control, that includes
34 minimum design and construction requirements to control and minimize the
35 movement of waste and waste constituents into the environment. Plans and
36 specifications submitted to satisfy the requirements of sections 39-176A
37 through 39-176F, Idaho Code, shall be certified by a registered professional
38 engineer. The minimum design requirements include the following features
39 and standards:

40 (1) Run-on and runoff controls for the phosphogypsum stack systems for
41 the collection, control, and treatment, as needed, of run-on and runoff from
42 the systems;

43 (2) Liner and leachate control systems that achieve the following mini-
44 mum design standards:

45 (a) Phosphogypsum stacks shall be constructed atop a composite liner
46 or approved alternative of equivalent hydraulic conductivity and dura-

1 bility. Liners shall be constructed of materials that have appropriate
2 physical, chemical, and mechanical properties to prevent failure;

3 (b) All liner and leachate control system components shall have ap-
4 propriate quality control and quality assurance standards, specifica-
5 tions, and procedures for construction.

6 (c) Phosphogypsum stacks shall have a leachate control system. Any
7 leachate emanating from a phosphogypsum stack system shall be routed to
8 a collection pond, such as a decant pond or similar water structure, to
9 be contained within the system or recirculated to the production plant,
10 or, if discharged, treated if required to meet applicable water quality
11 and discharge requirements. Collection ponds shall be constructed with
12 a composite liner or an approved alternative of equivalent hydraulic
13 conductivity and durability;

14 (d) Auxiliary holding ponds shall be designed with a synthetic liner or
15 an approved alternative of equivalent hydraulic conductivity and dura-
16 bility; and

17 (e) Process wastewater conveyances shall be constructed with a liner or
18 pipe.

19 (3) Perimeter dikes that shall incorporate minimum design standards
20 for freeboard, safety, and slope stability design factors, construction
21 methods, and other related parameters. Appropriate quality control and
22 quality assurance standards, specifications, and procedures for perimeter
23 dike construction shall be implemented;

24 (4) Any lateral expansion must be constructed in accordance with the
25 same requirements as a new phosphogypsum stack. Except for incidental de-
26 posits of phosphogypsum entrained in the process wastewater, or conditioned
27 phosphogypsum used as a cushion layer against rock slope, placement of phos-
28 phogypsum outside the phosphogypsum stack footprint is considered a lateral
29 expansion; and

30 (5) A groundwater monitoring plan.

31 SECTION 6. That Chapter 1, Title 39, Idaho Code, be, and the same is
32 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
33 ignated as Section 39-176F, Idaho Code, and to read as follows:

34 39-176F. PLAN -- APPROVAL OR REJECTION BY DEPARTMENT. (1) Upon receipt
35 by the department of environmental quality of a design and construction plan
36 submitted by an operator, the department shall have ninety (90) days to re-
37 view the plan.

38 (2) Upon determination by the department that a design and construction
39 plan submitted by an operator meets the requirements of this section, the de-
40 partment shall deliver to the operator, in writing, a notice of approval of
41 such plan, and thereafter said plan shall govern and determine the nature
42 and extent of the obligations of the operator for compliance with sections
43 39-176A through 39-176F, Idaho Code, with respect to the phosphogypsum stack
44 system for which the plan was submitted.

45 (3) If the department determines that a design and construction plan
46 fails to fulfill the requirements of this section, it shall deliver to the
47 operator, in writing, a notice of rejection of the plan and shall set forth in
48 said notice of rejection the reasons for such a finding. Upon receipt of said
49 notice of rejection, the operator may submit amended plans within forty-five

1 (45) days. The department shall have sixty (60) days to review an amended
2 plan. Upon further determination by the department that the amended plan
3 does not fulfill the provisions of sections 39-176A through 39-176F, Idaho
4 Code, it shall deliver to the operator, in writing, a notice of rejection of
5 the amended plan in the same manner as provided for rejection of the original
6 plan.

7 (4) A notice of rejection may be appealed by the operator to the board.

8 (5) The time periods in this section may be adjusted if agreed to by both
9 the department and the operator.

10 (6) A construction completion report shall be submitted to the depart-
11 ment within ninety (90) days of completion of construction activities. The
12 report shall include final record drawings and conformance of construction
13 to the approved design and construction plan, including construction qual-
14 ity control plans for phosphogypsum stack components.

15 (7) The board may require a fee sufficient for the review and approval
16 of plans and associated documents required by this section.