

IN THE SENATE

SENATE BILL NO. 1013

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO AN INSTITUTIONAL CONTROLS PROGRAM FOR THE BUNKER HILL MINING
2 AND METALLURGICAL COMPLEX SUPERFUND FACILITY; AMENDING TITLE 39, IDAHO
3 CODE, BY THE ADDITION OF A NEW CHAPTER 68, TITLE 39, IDAHO CODE, TO PRO-
4 VIDE A SHORT TITLE, TO ESTABLISH PROVISIONS REGARDING THE INSTITUTIONAL
5 CONTROLS PROGRAM, TO DEFINE TERMS, TO PROVIDE FOR SCOPE AND APPLICABIL-
6 ITY, TO PROVIDE STANDARDS FOR CONTAINMENT MANAGEMENT, TO PROVIDE FOR
7 INSTITUTIONAL CONTROLS PROGRAM PERMIT APPLICATION AND ADMINISTRATION,
8 AND TO PROVIDE THAT THE CHAPTER CONTROLS IN THE EVENT OF INCONSISTENT
9 LAWS; AND DECLARING AN EMERGENCY.
10

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

12 SECTION 1. That Title 39, Idaho Code, be, and the same is hereby amended
13 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
14 ter 68, Title 39, Idaho Code, and to read as follows:

15 CHAPTER 68

16 INSTITUTIONAL CONTROLS PROGRAM FOR THE BUNKER HILL MINING AND METALLURGICAL
17 COMPLEX SUPERFUND FACILITY

18 39-6801. SHORT TITLE. This chapter shall be known and may be cited as
19 the "Institutional Controls Program for the Bunker Hill Mining and Metallur-
20 gical Complex Superfund Facility Act."

21 39-6802. ESTABLISHMENT OF INSTITUTIONAL CONTROLS PROGRAM. In accor-
22 dance with the comprehensive environmental response, compensation, and
23 liability act of 1980 (CERCLA), 42 U.S.C. 9605, as amended by the superfund
24 amendments and reauthorization act of 1986 (SARA), P.L. 99-499, and, to the
25 extent practicable, the national oil and hazardous substances pollution
26 contingency plan, 40 CFR 300, the remedial actions for the Bunker Hill su-
27 perfund site are selected and documented in decision documents referred to
28 as a record of decision (ROD) and the body of documents referred to as the
29 administrative record. The institutional controls program (ICP) was estab-
30 lished under the residential soils/populated areas August 30, 1991, ROD as
31 a component of the human health remedy to maintain protective barriers to
32 underlying contamination. As the Bunker Hill superfund site expanded, this
33 area was referred to as operable unit (OU)-1. The ICP was incorporated into
34 the non-populated areas for OU-2 in the September 22, 1992, ROD to focus on
35 areas of future development, and OU-3 in the September 12, 2002, interim ROD
36 for residential and community areas outside of OU-1 and OU-2. Institutional
37 controls administrative area maps showing the geographic boundaries for the
38 ICP are available to the public on the internet or through the department
39 upon request.

1 39-6803. DEFINITIONS. As used in this chapter, unless a different
2 meaning clearly appears from the context:

3 (1) "Access restrictions" means physical barriers such as fences, bar-
4 ricades, curbs, barrier rocks, trenches, and temporary barriers that re-
5 strict access by vehicles, pedestrians, and animals to contaminated areas.

6 (2) "Agricultural land" means land used for pasturing animals or for
7 cultivation and production of agricultural crops, including conservation
8 reserve activities.

9 (3) "Applicant" means any person, contractor, public utility, govern-
10 ment, or other entity that is required to apply for an institutional controls
11 program (ICP) permit.

12 (4) "Barrier" means any physical structure, material, or mechanism
13 that acts to break the pathway between contaminants and human receptors,
14 including but not limited to soil, crushed aggregate/gravel, asphalt and
15 Portland cement concrete, fences, walls, floors, ceilings, access restric-
16 tions, or other structure or covering that separates contaminants from
17 contact with people or keeps contaminants in place.

18 (5) "Board" means the Idaho board of environmental quality.

19 (6) "Building construction" means construction activity to be per-
20 formed for any new structure involving disturbance of soil in excess of one
21 (1) cubic yard.

22 (7) "Building renovation" means construction activity to be performed
23 on any existing structure involving ceiling or insulation removal, work in
24 dirt crawl spaces or basements, or disturbance of soil in basements or crawl
25 spaces in excess of one (1) cubic yard.

26 (8) "Commercial property" means retail, wholesale, and commercial
27 businesses; public and common use areas; public buildings; and undeveloped
28 properties accessed by a maintained road or street and zoned for commercial
29 development.

30 (9) "Contaminants" means soil or other material containing, or likely
31 to contain, concentrations of lead, arsenic, or cadmium as identified in the
32 standards for contaminant management pursuant to this chapter.

33 (10) "Department" means the Idaho department of environmental quality.

34 (11) "Designee" means the entity responsible for implementing the re-
35 quirements of this chapter as identified by the department through a formal
36 agreement.

37 (12) "Developed recreation areas" means commercial and public recre-
38 ation areas containing constructed features such as boat ramps, picnic ar-
39 eas, and campgrounds outside the city limits of incorporated communities in
40 the Coeur d'Alene river corridor as defined under ICP administrative area
41 for OU-3. The developed recreation areas of the trail of the Coeur d'Alenes
42 includes all constructed trail surfaces, stop and views, oases, rest stops,
43 and trailheads, exclusive of all undeveloped areas within the trail right-
44 of-way.

45 (13) "Director" means the director of the Idaho department of environ-
46 mental quality.

47 (14) "Disposal" means the placement of contaminants into an authorized
48 repository.

49 (15) "Eligible properties" means residential properties and commercial
50 properties within the institutional controls administrative areas for OU-1

1 and OU-2 that were maintained properties when the ROD for the OU was estab-
2 lished, or maintained properties in OU-3 and existing as of March 27, 2007,
3 and requiring remediation, but not yet remediated.

4 (16) "Excavation" means any digging, breaching, or disruption of soil
5 or other protective barrier, not including cultivation of agricultural
6 lands and gardens or mining activities regulated under other state and fed-
7 eral programs, that may release or expose contaminants to the environment.

8 (17) "ICP permit" means a permit for the contaminant management autho-
9 rization for projects subject to this chapter.

10 (18) "Infrastructure" means facilities such as trails, roads, streets,
11 highways, and bridges; stormwater, drinking water, and wastewater systems;
12 flood prevention systems, including dikes and levees; and utilities, in-
13 cluding electrical power and natural gas systems.

14 (19) "Large project" means a project where one (1) cubic yard or more
15 of soil containing contaminants is disturbed or removed and also includes
16 but is not limited to infrastructure construction and maintenance; building
17 construction, renovation, and demolition; demolition of existing buildings
18 and construction of subdivisions and planned unit developments (PUD); con-
19 struction within and maintenance of right-of-ways; and land development or
20 any change in the use of land that may result in the release or migration of
21 contaminants.

22 (20) "Mining activities" means the recovery of a mineral from min-
23 eral-bearing deposits, which includes reclamation, extraction, excavation,
24 overburden placement, disposal of tailings resulting from processing, and
25 disposal of mineral extraction wastes, including tailings that are the
26 result of extraction, waste rock, and other extraction wastes uniquely asso-
27 ciated with mining.

28 (21) "OU-1" means the operable unit 1 for the institutional controls
29 administrative area designated to include the twenty-one (21) square-mile
30 area surrounding the former smelter complex, also referred to as the "Bunker
31 Hill box." OU-1 includes the populated areas of the Bunker Hill box.

32 (22) "OU-2" means the operable unit 2 for the institutional controls
33 administrative area designated to include the twenty-one (21) square-mile
34 area surrounding the former smelter complex, also referred to as the "Bunker
35 Hill box." OU-2 includes the non-populated areas of the Bunker Hill box.

36 (23) "OU-3" means the operable unit 3 for the institutional controls
37 administrative area designated to include areas of mining-, milling-, and
38 smelting-related contamination in the south fork of the Coeur d'Alene river
39 corridor from its headwaters to the confluence with the north fork of the
40 Coeur d'Alene river and from the confluence of the north and south fork to
41 the mouth of the river and its confluence with Coeur d'Alene lake, including
42 adjacent floodplains, tributaries, and fill areas. The area also includes
43 the trail of the Coeur d'Alenes inside and outside the administrative bound-
44 ary, except that portion within the exterior boundaries of the Coeur d'Alene
45 Indian reservation. The area also includes areas in the Coeur d'Alene river
46 corridor, as defined in this subsection, outside the administrative bound-
47 ary where testing has verified that contaminants related to mining, milling,
48 and smelting have come to lie and remediation is required. This area is also
49 referred to as the "Coeur d'Alene basin." The area does not include any area
50 within OU-1 or OU-2 or any other area excluded under this chapter.

1 (24) "Owner" means any person, partnership, or corporation having own-
2 ership, title, or dominion over property for which an ICP permit is required.

3 (25) "Record of compliance" means the record maintained pursuant to
4 this chapter for small projects.

5 (26) "Record of decision" or "ROD" means the decision document identi-
6 fying the selected remedy under CERCLA.

7 (27) "Release" means any excavation, spilling, leaking, pumping, pour-
8 ing, emitting, emptying, discharging, injecting, escaping, dumping, or dis-
9 posing of contaminants into the environment.

10 (28) "Repository" means an authorized disposal location for contami-
11 nants that has been established by the department and the United States en-
12 vironmental protection agency.

13 (29) "Residential property" means property used by private individuals
14 or families as a residence and undeveloped properties accessed by a main-
15 tained road or street and zoned for residential development.

16 (30) "Sensitive populations" means pregnant women and children up to
17 twelve (12) years old.

18 (31) "Site" means the geographic area that includes the institutional
19 controls administrative areas for OU-1, OU-2, and OU-3 within the Bunker
20 Hill superfund site.

21 (32) "Small project" means a project where less than one (1) cubic yard
22 of soil containing contaminants is disturbed or means interior work that is
23 not building renovation.

24 (33) "Trail of the Coeur d'Alenes" means all developed recreation areas
25 and undeveloped areas within the former Union Pacific railroad Mullan and
26 Wallace branch right-of-way.

27 39-6804. SCOPE AND APPLICABILITY. (1) The purpose of this chapter is
28 to ensure that ICP activities associated with excavation and grading, such
29 as infrastructure development and maintenance; building construction and
30 renovation; and land development, redevelopment, or modification within the
31 institutional controls administrative areas, provide for the construction
32 and maintenance of contaminant barriers and implementation of other con-
33 taminant management requirements to preclude the release and migration of
34 contaminants as necessary to protect public health and the environment. It
35 is imperative that current and future development and construction activi-
36 ties proceed in a manner that minimizes the release of contaminants into the
37 environment to minimize exposure to area residents, communities, workers
38 involved in area project work, and environmental receptors and to complement
39 existing land use regulations and permitting processes and provide a screen-
40 ing process to determine whether proposed activities are subject to this
41 chapter.

42 (2) It is the intent of the department to work with local governments,
43 Idaho public health district No. 1, the United States environmental protec-
44 tion agency, federal land management agencies, the Coeur d'Alene Tribe, and
45 private parties in managing contaminants within the regulated area by way
46 of the ICP. This chapter establishes standards for barrier installation and
47 maintenance and other contaminant management practices by:

48 (a) Requiring ICP permits and requiring barriers for certain construc-
49 tion and excavation activities;

- 1 (b) Licensing contractors, utilities, and government entities that may
2 disrupt or construct barriers or otherwise disturb contaminants;
- 3 (c) Adopting performance standards;
- 4 (d) Inspecting for project compliance as required;
- 5 (e) Regulating the movement and disposal of contaminants;
- 6 (f) Making it unlawful to knowingly disrupt a barrier in a fashion
7 likely to expose persons to contaminants;
- 8 (g) Maintaining records of ICP activities, including a database track-
9 ing system to assist the public, lenders, and potential purchasers of
10 property within the site;
- 11 (h) Providing technical assistance and testing;
- 12 (i) Providing health screening and intervention;
- 13 (j) Ensuring a readily available repository for contaminants;
- 14 (k) Providing materials to maintain and restore barriers for small
15 projects;
- 16 (l) Providing disposal containers to assist in removing contaminated
17 soil for small projects and for transport and disposal of such soil;
- 18 (m) Providing health and safety information and training to licensees
19 and the public;
- 20 (n) Providing plastic, gravel, and use of vacuums for interior
21 projects; and
- 22 (o) Maintaining guidelines for managing contaminants.
- 23 (3) The department may delegate its authority to implement the ICP, as
24 defined by this chapter, to a designee with local multi-jurisdictional au-
25 thority through a formal agreement.
- 26 (4) (a) This chapter does not apply to:
- 27 (i) Operations undertaken at the direction of, under the super-
28 vision of, and subject to inspection by the United States environ-
29 mental protection agency, including directing, supervising, and
30 inspecting project work or on lands owned or otherwise under the
31 jurisdiction, custody, and control of the Coeur d'Alene Tribe or
32 the federal land management agencies such as the United States de-
33 partment of agriculture forest service and the bureau of land man-
34 agement; or
- 35 (ii) The Union Pacific railroad or its contractors when conduct-
36 ing activities within the trail of the Coeur d'Alenes pursuant to
37 the requirements of the consent decree entered August 25, 2000, by
38 the United States district court for the district of Idaho (Case
39 Nos. 91-0342 and 99-606).
- 40 (b) This chapter does not address financial liability for contaminant
41 management resulting from a failure of a CERCLA remedy due to a natural
42 disaster.
- 43 (5) Contaminant management on eligible properties will not require
44 construction of final barriers in accordance with this chapter by the owner
45 but may require dust, erosion, and health and safety and temporary cap
46 controls to prevent further migration onto lands of others. Applicant per-
47 formed soil testing will be conducted consistent with sampling and analytic
48 procedures developed by the department.

1 39-6805. STANDARDS FOR CONTAMINANT MANAGEMENT. (1) Except as other-
2 wise provided in this chapter, contaminant management is required on all
3 properties within the institutional controls administrative areas of OU-1,
4 OU-2, and OU-3, including properties that have been remediated; properties
5 tested and scheduled for remediation; properties not yet tested; properties
6 with testing of deep soils (below eighteen (18) inches) by the applicant
7 where a project may result in deep excavations; and properties with replace-
8 ment and repair of remediation barriers in accordance with the remedial
9 design report or other management activities designated for that geographic
10 location or specific property.

11 (2) As necessary to protect public health and the environment, the de-
12 partment may impose contaminant management requirements, other than barrier
13 installations, on projects where:

14 (a) For OU-1 and OU-2, soils exhibit lead concentrations in excess of
15 three hundred fifty (350) parts per million (ppm) lead, particularly
16 where a property has been remediated with either six (6) or twelve (12)
17 inches of clean fill but contaminants in the three hundred fifty (350)
18 to one thousand (1,000) ppm lead range remain below the six (6) or twelve
19 (12) inch depth and those contaminants may be disturbed by a large or
20 small project;

21 (b) For OU-1 and OU-2, any large or small project or building renovation
22 involves the breaching or disturbance of a barrier or the disturbance or
23 migration of contaminants exceeds one thousand (1,000) ppm lead; and

24 (c) For OU-3, properties testing below action levels in the top eigh-
25 teen (18) inches where large or small projects may disturb contaminants
26 below eighteen (18) inches are in excess of one thousand (1,000) ppm
27 lead or one hundred (100) ppm arsenic.

28 (3) Developed recreation areas with surface soil containing lead con-
29 centrations greater than seven hundred (700) ppm lead and one hundred (100)
30 ppm arsenic shall be capped pursuant to the applicable remedial design
31 report or other management activities designated for that geographic loca-
32 tion.

33 (4) Agricultural and undeveloped land within the institutional con-
34 trols administrative area are exempt, unless excavation and grading activ-
35 ities such as soil transport off-site or development by the owner or his
36 agents on these lands is likely to result in the release or migration of
37 contaminants from these lands to adjacent nonagricultural or undeveloped
38 areas.

39 (5) All barriers existing or constructed after the effective date of
40 this chapter shall be maintained and protected to construction specifica-
41 tions as directed by the department. Materials used for barriers will be
42 sampled for contaminants to ensure:

43 (a) For OU-1 and OU-2, that they have no earthen materials containing,
44 on average, more than one hundred (100) ppm of lead or arsenic, nor more
45 than five (5) ppm of cadmium, with no individual sample containing more
46 than one hundred fifty (150) ppm of lead; and

47 (b) For OU-3, that soil and crushed aggregate/gravel imported for
48 barrier material shall contain less than one hundred (100) ppm lead,
49 thirty-five (35) ppm arsenic, and five (5) ppm cadmium based on average
50 of backfill sampling results. No single sample of replacement materi-

1 als may exceed one hundred fifty (150) ppm lead or forty-five (45) ppm
2 arsenic.

3 (6) No new PUD or subdivision will be developed without contaminant
4 management on any portion of the property that exceeds the following contam-
5 inant concentrations:

6 (a) For OU-1 and OU-2, average of three hundred fifty (350) ppm lead or a
7 single lot exceeds one thousand (1,000) ppm lead; and

8 (b) For OU-3, one thousand (1,000) ppm lead or one hundred (100) ppm ar-
9 senic.

10 (7) No person may conduct, except in accordance with this chapter,
11 any activity within the institutional controls administrative area that
12 breaches a barrier, may breach a barrier, or disturbs the same or otherwise
13 results in a threat to public health or the environment from the migration
14 of contaminants through tracking on tires or vehicles, visible airborne
15 dust, excavation, transport, disposal, renovation, demolition, or run-on
16 or run-off from stormwater or in any other manner on properties tested and
17 requiring remediation and on properties not yet tested within the institu-
18 tional controls administrative area.

19 (8) Barriers are required as necessary to attain the standards de-
20 scribed in this chapter. Construction and maintenance criteria for barriers
21 are specified in the remedial design report designated for each applicable
22 geographic location and are available through the department upon request.

23 39-6806. INSTITUTIONAL CONTROLS PROGRAM PERMIT APPLICATION AND AD-
24 MINISTRATION. (1) An ICP permit is required for large projects and building
25 renovations.

26 (2) An ICP permit is required for a project that changes the use of a
27 property containing contaminants. A new barrier or additional or more sub-
28 stantial barrier may be required unless waived by the department.

29 (3) A single annual ICP permit covering a specific list of projects may
30 be obtained from the department by public utilities and government entities
31 eligible under this chapter at the beginning of each year's construction
32 season.

33 (4) To apply for an ICP permit, all applicants need to complete a form
34 provided by the department.

35 (5) The department may waive certain application requirements or in-
36 formation, or request additional or alternative actions or information, de-
37 pending on the type and extent of the project and conditions encountered. In
38 no instance may a waiver violate the intent of this chapter or the applicable
39 ROD for the relevant OU.

40 (6) Work requiring an ICP permit may not commence until an inspection
41 has been made or waived by the department and an ICP permit has been issued.

42 (7) If the ICP permit involves work within any public right-of-way, the
43 appropriate agencies shall be notified of the work by the entity receiving
44 the ICP permit.

45 (8) All work governed by this chapter is subject to inspection by the
46 department.

47 (a) All ICP permits granted pursuant to this chapter remain subject to
48 other inspections and requirements prescribed by state or local govern-
49 ments.

1 (b) The applicant will notify the department within forty-eight (48)
2 hours of completing the work, excluding weekends and holidays, and
3 call for inspection in accordance with the terms of the ICP permit. The
4 inspector will note approval of the work in writing and enter same in
5 the database tracking system or note reasons for disapproval and steps
6 that shall be taken to complete the work. Upon completion of the work
7 to the department's satisfaction, the final approval will be noted in
8 the database tracking system. Such entry constitutes the record of
9 compliance for the project. The department may waive the inspection
10 requirement.

11 (9) Any ICP permit may be revoked or a stop work order may be issued,
12 without notice by the department, for noncompliance with or violation of any
13 of the provisions of this chapter or any requirement or limitation of the ICP
14 permit. If an ICP permit is revoked, the department shall take such steps as
15 are necessary to eliminate any danger from contamination, including comple-
16 tion of work by the department. The applicant, contractor, or owner may be
17 required to pay all costs and expenses for abatement of any danger and com-
18 pletion of the project, including legal fees incurred by the department to
19 obtain compliance. The department will endeavor to provide written notice
20 but reserves the right to act summarily to protect public health and the en-
21 vironment.

22 (10) A record of compliance for small projects that documents compli-
23 ance with the performance standards established by this chapter will be en-
24 tered into the database tracking system based on an inspection requested of
25 the department by the property owner or tenant. The record of compliance
26 signifies the property owner or tenant was informed of and provided with ap-
27 plicable performance standards and guidelines and materially complied with
28 the same.

29 (11) Licensing for contractors, public utilities, and government enti-
30 ties.

31 (a) Any contractor working on a project requiring an ICP permit shall be
32 licensed by the department. There will be no charge for a contractor's
33 license. A contractor's license will not be needed for an owner working
34 on his own property.

35 (b) Any public utility or government entity, including a city, county,
36 special purpose district, or the state of Idaho, upon a demonstration
37 that supervisory employees have participated in training approved by
38 the department, may receive an annual license that will allow its em-
39 ployees to perform excavation and grading operations without obtaining
40 individual ICP permits. This license may be granted by the department
41 and will require that the utility or entity comply with the standards
42 of contaminant management and all other requirements contained in this
43 chapter. Entities licensed under this section shall maintain a log of
44 all excavations and grading operations on a form approved by the depart-
45 ment. All forms shall be forwarded to the department on a schedule de-
46 termined by the department. All licensees shall telephone the Shoshone
47 county or Kootenai county one-call locating service, as appropriate,
48 prior to any excavation or grading operation. Licenses will be renewed
49 annually upon a showing that the utility or government entity has oper-
50 ated in compliance with this chapter.

1 (c) To obtain a license from the department, the contractor, public
2 utility, or government entity shall participate in training approved
3 by the department and pass an annual examination administered by the
4 department, focusing on the reasons for and methods of controlling
5 contaminants. Supervisors involved in activities dealing with con-
6 taminants shall participate in the training and pass information on to
7 employees as is necessary to protect their health and safety and assure
8 compliance with this chapter.

9 (d) Any contractor whose license has been revoked by the department
10 within the past three (3) years shall, as a condition of reinstatement
11 and maintaining the status of a licensed contractor, be bonded in the
12 minimum amount of two thousand dollars (\$2,000). Said bond shall be
13 at least five percent (5%) of the cost of any contract the contractor
14 is engaged in, whichever is greater; shall be in a form approved by the
15 department; and shall be suitable to insure payment for completion of
16 barrier work not completed by the contractor. A cash deposit or other
17 security acceptable to the department may be utilized in lieu of a bond.
18 The department may establish a bonding program for all contractors, if
19 deemed necessary to carry out the provisions of this chapter.

20 (e) Suspension or revocation of license.

21 (i) Upon a showing that a contractor, public utility, or govern-
22 ment entity licensee has violated any provision of this chapter or
23 has violated any other health or building code within the bound-
24 aries of the site or institutional controls administrative area,
25 suspension or revocation of license may be imposed. Suspension
26 may be made by the department. Revocation may be made by the direc-
27 tor upon recommendation of the department. Notification of sus-
28 pension or revocation shall be in writing. No suspension may be
29 made for more than thirty (30) days without approval of the direc-
30 tor. Revocation of license may be made by the director upon a show-
31 ing of good cause.

32 (ii) Any person aggrieved by suspension or revocation of license
33 may petition for review pursuant to section 39-107(5), Idaho Code.
34 Filing a petition for review stays the suspension or revocation,
35 unless the board of environmental quality makes a finding that
36 such stay is likely to present a health risk to a person or persons.

37 (iii) If a license is revoked, the contractor may, upon payment of
38 any cleanup or remediation costs related to past work, reapply for
39 reinstatement of license after one (1) year; however, a contractor
40 whose license has been revoked may not obtain a new license under a
41 different corporate or partnership status until the provisions of
42 this paragraph are satisfied.

43 (12) Performance of work.

44 (a) All work done pursuant to an ICP permit shall be completed in a neat
45 and workmanlike manner and so scheduled as to cause the minimum inter-
46 ference with traffic or public use, if applicable, and a minimum disper-
47 sal of contaminants.

48 (b) If the work is unduly delayed by the applicant, and if the public
49 interest reasonably so demands, the department has the authority, upon
50 twenty-four (24) hours' written notice to the applicant, to complete

1 the work to the extent that the barrier is restored and any hazardous ma-
2 terial is covered or removed. The actual cost of work by the department,
3 including legal fees plus fifteen percent (15%) as an overhead charge,
4 shall be charged to and paid by the applicant or the owner.

5 (13) Approval of alternative standards. Any person seeking approval of
6 alternative standards as described in this chapter may submit a written re-
7 quest for approval to the department. The request shall be accompanied by
8 an engineering report indicating why the requesting party should be relieved
9 of the requirement for compliance or why the requested alternate standard is
10 appropriate. At the applicant's expense, the department may consult with
11 its own engineer to confirm the applicability of this chapter to the pro-
12 posed project. The department may approve an alternate standard where such
13 approval does not jeopardize the public welfare or existing barriers. The
14 decision of the department will be in writing, stating the reasons for its
15 decision. Any person aggrieved by the department's action or inaction may
16 petition for review pursuant to section 39-107(5), Idaho Code.

17 (14) Owner and applicant responsibility for claims and liabilities.
18 Both the owner and the applicant are responsible for ensuring that all re-
19 quirements of this section are complied with. The applicant is responsible
20 for all claims and liabilities arising out of work performed by the applicant
21 under the ICP permit or arising out of the applicant's failure to perform
22 obligations with respect to these regulations. The owner is responsible for
23 all claims and liabilities for work done by the owner with or without an ICP
24 permit and for work done at the direction of the owner without an ICP per-
25 mit. The owner remains responsible to complete the project or to restore the
26 premises to a safe condition to the satisfaction of the department should the
27 applicant fail to complete or restore it.

28 (15) Responsibility of permit applicant. It is the responsibility of
29 any person applying for, or required to apply for, a permit by this chapter to
30 show affirmatively, by all reasonable means, that his undertaking complies
31 with this chapter or with any related rules, statutes, or ordinances.

32 (16) Permit revocation. Any permit or permission, actual or implied,
33 granted by the department may be revoked, for cause, by written notice sent
34 to the permit holder or his agent. Any person, association, or corporation
35 who continues to act under such permit or permission, actual or implied, more
36 than ten (10) days after the sending or delivery of notice of revocation is
37 presumed to be in violation of this chapter and subject to the penalties pro-
38 vided in this section.

39 (17) Variances. A variance may be granted only upon an affirmative
40 showing by an applicant that a unique and undue hardship is caused by a phys-
41 ical characteristic of a project site under an ICP permit that is not of the
42 applicant's making and that approval of the variance would not be contrary to
43 the public interest or to the purposes of this chapter.

44 (18) Enforcement. Failure to comply with the provisions of this chapter
45 shall be subject to enforcement pursuant to the enforcement provisions of
46 the Idaho environmental protection and health act in section 39-108, Idaho
47 Code.

1 39-6807. INCONSISTENT LAWS -- THIS CHAPTER CONTROLS. If any provision
2 of this chapter is inconsistent with the provisions of any other law, gen-
3 eral, specific, or local, the provisions of this chapter control.

4 SECTION 2. An emergency existing therefor, which emergency is hereby
5 declared to exist, this act shall be in full force and effect on and after its
6 passage and approval.