TITLE 39
HEALTH AND SAFETY

CHAPTER 72
IDAHO LAND REMEDIATION ACT

39-7201. SHORT TITLE. This chapter may be known and cited as the "Idaho Land Remediation Act."

[39-7201, added 1996, ch. 252, sec. 1, p. 796.]

39-7202. LEGISLATIVE FINDINGS. The legislature hereby finds and declares:

(1) That it is the policy of the state of Idaho to provide for the protection of the public health, welfare, safety, and environment; and to foster the remediation, transfer, reuse, or redevelopment of sites or groups of sites based on the risk to human health and the environment where releases or threatened release of hazardous substances or petroleum exists. The minimization of risk to public health and the environment on a commercial and industrial site offers significant potential economic benefit to local communities and is vital to their use and reuse as sources of employment, housing, recreation and open-space areas.

(2) That establishing a voluntary program for the remediation of hazardous substance or petroleum contaminated sites will encourage innovation and cooperation between the state, local communities, and interested persons and will promote the economic revitalization of property. It is intended that this program will provide for an expedited remediation process by eliminating the need for many adversarial enforcement actions and delays in remediation plan approvals.

(3) That providing financial assistance to eligible property owners who conduct voluntary cleanups will promote the economic revitalization of property, particularly in rural communities, and will reduce or eliminate the need for many adversarial enforcement actions and delays in remediation plan approvals.

[39-7202, added 1996, ch. 252, sec. 1, p. 796; am. 2006, ch. 308, sec. 1, p. 947.]

39-7203. GENERAL DEFINITIONS. As used in this chapter:

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

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

(3) "Eligible property owner" means any individual, association, partnership, firm, joint stock company, trust, estate, private corporation, or any other nonpublic entity that is the current owner of a contaminated property, but that did not cause, contribute, or consent to the release that led to the contamination or own the property at the time of the release that led to the contamination. An eligible property owner shall not include any individual, association, partnership, firm, joint stock company, trust, estate, private corporation, or any other nonpublic entity that is:

(a) Affiliated with any individual or entity that caused, contributed, or consented to the release that led to the contamination, or owned the property at the time of the release that led to the contamination, whether directly or through a direct or indirect familial relationship, or any contractual, corporate, or financial relationship, excluding

such relationships created by a contract for the sale of the property at issue; or

(b) The owner as a result of a reorganization of an entity that caused, contributed, or consented to the release that led to the contamination, or that owned the property at the time of the release that led to the contamination.

(4) "Hazardous substance" has the meaning set forth in section 101(14) of the comprehensive environmental, response, compensation and liability act (CERCLA), 42 U.S.C. 9601 (14) as amended.

(5) "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.

(6) "Petroleum" includes petroleum asphalt and crude oil or any part of petroleum asphalt or crude oil that is liquid at standard conditions of temperature and pressure (sixty (60) degrees Fahrenheit and fourteen and seven-tenths (14.7) pounds per square inch absolute).

(7) "Qualifying remediation costs" means reasonable costs incurred performing remediation activities integral to achieving the cleanup goals identified in a remediation work plan approved by the department.

(8) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discarding of barrels, containers, or other closed receptacles containing any hazardous substance or petroleum.

(9) "Remediation" means any of the following:

(a) Actions necessary to prevent, minimize, or mitigate damages to the public health or welfare or to the environment, which may otherwise result from a release or threat of a release; or

(b) Actions consistent with a permanent remedy taken instead of, or in addition to, removal actions in the event of a release or threatened release of a hazardous substance or petroleum into the environment to eliminate the release of hazardous substances or petroleum so that the hazardous substances or petroleum do not migrate to cause substantial danger to present or future public health or welfare or the environment; or

(c) The cleanup or removal of released hazardous substances or petroleum from the environment.

(10) "Site" means a parcel of real estate for which an application has been submitted under section 39-7204, Idaho Code.

(11) "Technical professional" means a professional geologist or professional engineer registered in the state of Idaho.

[39-7203, added 1996, ch. 252, sec. 1, p. 796; am. 2001, ch. 103, sec. 66, p. 303; am. 2006, ch. 308, sec. 2, p. 948.]

39-7204. PARTICIPATION. (1) To participate in the remediation program a person must submit an application to the department as described under subsection (2) of this section.

(2) An application submitted under this section must meet the following conditions:

(a) Contain the following general information concerning:

(i) the person,

(ii) the site, and

(iii) other background information as requested by the department;

(b) An environmental assessment that conforms to ASTM Standard Practice E 1527, as amended, or equivalent.

(3) Not more than thirty (30) days after receiving an application under subsection (2) of this section, the department shall determine if the person is eligible to participate in the remediation program under this chapter.

(4) The department may reject an application submitted under subsection (2) of this section for any of the following reasons:

(a) Remediation is required pursuant to sections 39-101 through 39-129, sections 39-4401 through 39-4432, or sections 39-7401 through 39-7429, Idaho Code, or rules promulgated thereunder, or other applicable statutory or common law; or

(b) The condition of the hazardous substance or petroleum described in the application constitutes an imminent and substantial threat to human health or the environment; or

(c) The application is not complete.

(5) If the application is rejected under subsection (4)(c) of this section, the department shall provide the person with a list of all information needed to make the application complete. If the department fails to comply with this subsection, the application shall be considered completed for the purposes of this chapter.

(6) If the department rejects an application, the department shall do the following:

(a) Notify the person that the department rejected the application;

(b) Explain the reason the department rejected the application.

[39-7204, added 1996, ch. 252, sec. 1, p. 797; am. 2026, ch. 7, sec. 36, p. 58.]

39-7205. WORK PLANS. (1) If the department determines an application is eligible under this chapter, the person may submit a proposed voluntary remediation work plan to the department. Before the department evaluates a proposed voluntary remediation work plan, the person who submitted the work plan and the department must enter into a voluntary remediation agreement that sets forth the terms and conditions of the evaluation and the implementation of the work plan.

(a) A voluntary remediation agreement must include the following:

(i) An estimation of costs the department may incur under this chapter;

(ii) A payment schedule of all reasonable costs estimated to be incurred by the department in the review and oversight of the work plan;

(iii) A provision for the department's oversight including access to site and pertinent site records;

(iv) A timetable for the department to do the following:

1. Reasonably review and evaluate the adequacy of the work plan; or

2. Make a determination concerning the approval or rejection of the work plan;

(v) A provision to modify the voluntary remediation agreement and voluntary remediation work plan based upon unanticipated site conditions;

(vi) Any other conditions considered necessary by the department or the person concerning the effective and efficient implementation of this chapter.

(b) A proposed voluntary remediation work plan must include a proposed statement of work and schedule to accomplish the remediation in accordance with rules established by the board. Any institutional control proposed as part of a work plan that requires activity and/or use limitations shall comply with the uniform environmental covenants act, chapter 30, title 55, Idaho Code.

(2) If a voluntary remediation agreement is not reached between a person and the department within a reasonable time after good faith negotiations have begun, the person or the department may withdraw from the negotiations.

[39-7205, added 1996, ch. 252, sec. 1, p. 798; am. 2010, ch. 99, sec. 1, p. 191.]

39-7206. EVALUATION AND REVIEW RESPONSIBILITIES. (1) Pursuant to the signed voluntary remediation agreement, the department or a person under contract with the department shall do the following:

(a) Review and evaluate the site and the affected area surrounding the site;

(b) Review and evaluate the proposed voluntary remediation work plan for protection of public health and the environment based on rules promulgated by the board.

(2) At any time during the evaluation of a proposed voluntary remediation work plan, the department may request that a person submit additional or corrected information to the department. A person may:

(a) Comply with the request; or

(b) Withdraw the person's proposed voluntary remediation work plan from consideration and terminate the voluntary remediation agreement.

(3) Before the department approves a proposed voluntary remediation work plan under this section, the department must:

(a) Notify local government units located in a county affected by the proposed voluntary remediation work plan of the work plan; and,

(b) Provide that a copy of the proposed voluntary remediation work plan and a copy of the voluntary remediation agreement be placed in at least one (1) public library in a county affected by the work plan; and,

(c) Notify by reasonable public notice potentially affected persons to request comments concerning the proposed voluntary remediation work plan; and,

(d) Provide a comment period of at least thirty (30) days following publication of a notice under this section. During the comment period, interested potentially affected persons may do the following:

(i) submit written comments to the department concerning the proposed voluntary remediation work plan,

(ii) request a public hearing concerning the proposed voluntary remediation work plan.

(4) If the department receives a significant number of written requests from potentially affected persons, the department may hold a public hearing in the geographical area affected by the proposed voluntary remediation work plan on the question of whether to modify, approve or reject the work plan. All written comments and public testimony shall be considered by the department.

(5) The department shall:

(a) Approve;

(b) Modify and approve; or

(c) Reject the proposed voluntary remediation work plan.

(6) If the department rejects a proposed voluntary remediation work plan under this section:

(a) The department shall notify the person and specify the reasons for rejecting the work plan; and

(b) The person may appeal the department's decision under chapter 52, title 67, Idaho Code.

(7) If the department approves, or modifies and approves, a proposed voluntary remediation work plan under this section, the department shall:

(a) Notify the person in writing, under the applicable provisions set forth in this chapter, that the voluntary remediation work plan has been approved, or modified and approved;

(b) Incorporate the approved voluntary remediation work plan into the voluntary remediation agreement.

[39-7206, added 1996, ch. 252, sec. 1, p. 798.]

39-7207. COVENANT NOT TO SUE. (1) If the department determines that a person has successfully completed a voluntary remediation work plan approved under this chapter, the department shall certify that the work plan has been successfully implemented or satisfied by issuing the person a certificate of completion. The issuance of a certificate of completion under this section is a final agency action for purposes of this chapter.

(2) A person who receives a certificate of completion under this section shall record a copy of the certificate of completion with the deed for the site on which the remediation took place.

(3) If the department determines that the person has not successfully implemented a voluntary remediation work plan approved under this chapter, the department shall notify the person of this determination under this chapter.

(4) If the department issues a certificate of completion to a person under this chapter, the department, upon request, shall also negotiate and provide the person a covenant not to sue for any claim for environmental remediation under state law resulting from or based upon the release or threatened release of a hazardous substance or petroleum that is the subject of the approved voluntary remediation work plan successfully implemented under this chapter. The covenant not to sue shall extend to any current or future owner or operator of the site or portion thereof who did not cause, aggravate, or contribute to the release or threatened release.

(5) A covenant not to sue issued under this section shall not apply to claims for a condition or the extent of a condition that:

(a) Was present on the site involved in an approved and implemented voluntary remediation work plan; and

(b) Was not known to the department at the time the department issued the certificate of completion under this chapter.

(6) Except as provided under federal law or agreed to by a federal governmental entity, a covenant not to sue issued under this section shall not release a person from liability to the federal government for claims based on federal law.

(7) During the implementation of an approved voluntary remediation work plan, the department shall not bring an action, including an admin-

istrative or judicial action for any liability for remediation relating to the release or threatened release of a hazardous substance or petroleum that is the subject of the voluntary remediation work plan, against a person who entered into a voluntary remediation agreement and who is implementing the voluntary remediation work plan in accordance with such agreement implementing the voluntary remediation work plan.

[39-7207, added 1996, ch. 252, sec. 1, p. 799.]

39-7208. RECISION. (1) This chapter does not prohibit or limit the department's recision of the voluntary remediation agreement or the covenant not to sue at any time if:

(a) The person implementing the work plan fails substantially to comply with the terms and conditions of:

(i) a voluntary remediation agreement, or

(ii) covenant not to sue;

(b) A hazardous substance or petroleum release becomes an imminent and substantial threat to human health or the environment.

(2) The department shall also notify the county in which the said site exists of recision of the covenant not to sue for the purposes of determining property exemptions provided under section 63-602BB, Idaho Code.

[39-7208, added 1996, ch. 252, sec. 1, p. 800; am. 1997, ch. 117, sec. 41, p. 339.]

39-7209. LENDER LIABILITY. Pursuant to rules adopted by the board, a person who maintains indicia of ownership primarily to protect a security interest in a site, and who does not participate in the management of the site, shall not be considered an owner or operator of that site, nor liable under any pollution control or other environmental protection law, rule or regulation, or otherwise responsible for any environmental contamination or response activity costs consistent with United States environmental protection agency policy, 60 Federal Register 63517, dated December 11, 1995, as amended. This section shall apply to all indicia of ownership existing at the time of passage of this chapter and those arising thereafter.

[39-7209, added 1996, ch. 252, sec. 1, p. 800.]

39-7210. RULES. Within one (1) year after the effective date of this section, the board shall, through negotiated rulemaking, adopt rules to carry out the purposes of this provision consistent with federal and state law which shall provide for the following:

(1) The establishment of methodologies to determine site-specific risk-based remediation standards, which shall be no more stringent than applicable or appropriate relevant federal and state standards and are consistent with 42 U.S.C. 9621, taking into consideration scientific information regarding the following:

(a) protection of public health and the environment,

(b) the future industrial, commercial, residential, or other use of the site to be remediated and of surrounding properties,

(c) the availability of institutional or engineering controls that are protective of public health and the environment, including deed restrictions, and

(d) natural background levels for hazardous constituents;

(2) The establishment of administrative procedures that minimize delay and expense of the remediation, processing submissions and overseeing remediation;

(3) The issuance of certificates of completion once the voluntary remediation work plans is implemented;

(4) Consistent with applicable local, state and federal law, guidelines to assist in the issuance of any permits required to initiate and complete a voluntary remediation work plan;

(5) Collection and payment of fees to defray the actual reasonable costs of the voluntary remediation program.

(6) Lender liability consistent with United States environmental protection agency policy, 60 Federal Register 63517, dated December 11, 1995, as amended.

[39-7210, added 1996, ch. 252, sec. 1, p. 801.]

39-7211. IDAHO COMMUNITY REINVESTMENT PILOT INITIATIVE. [EFFECTIVE UNTIL CERTIFICATION TO SECRETARY OF STATE BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY THAT CERTAIN EVENTS HAVE OCCURRED] (1) There is hereby established in the state treasury a fund to be known as the Idaho community reinvestment pilot initiative fund which shall consist of moneys appropriated to the fund, donations, gifts and grants from any source and any other moneys which may hereafter be provided by law. The state treasurer shall be the custodian of the fund and shall invest said moneys in accordance with law. Any interest earned on the moneys in the fund shall be deposited in the fund. Moneys in the fund shall be disbursed in accordance with the directions of the director of the department of environmental quality. All moneys in the fund are perpetually appropriated to the director for expenditure in accordance with the provisions of this section.

(2) The state of Idaho hereby authorizes financial assistance to eligible property owners conducting voluntary cleanup actions pursuant to this chapter. The financial assistance authorized by this section shall not exceed one hundred fifty thousand dollars ($150,000) per project and shall be limited to, subject to the one hundred fifty thousand dollars ($150,000) maximum, seventy-percent (70%) of a project's qualifying remediation costs certified by the department pursuant to this section.

(3) Pursuant to general fund appropriation, the maximum overall financial assistance authorized by this section is one million five hundred thousand dollars ($1,500,000) in qualified remediation cost expenditures. A maximum of ten (10) projects may participate in the initiative.

(4) The department shall establish an annual priority list for community revitalization projects. The priority list shall be used as the method for allocating funds under this initiative.

(a) On an annual basis, the department shall establish, at a minimum, a continuous three (3) month calendar period in which eligible property owners may submit a written request, on a standard form developed by the department, to participate.

(b) On an annual basis, the department shall develop a priority list based on a weighted numerical points system established by the department. The rating system shall consider the following criteria wherein the department shall weigh each succeeding criteria less heavily than the preceding criteria:

(i) Whether the project is located in a city with a population of under twenty thousand (20,000) residents;

(ii) The level of social and economic benefit expected from the proposed reuse plan;

(iii) Whether contamination is preventing or complicating redevelopment;

(iv) Whether a reuse plan meets local planning and reuse goals, is compatible with long-term plans, and is ready to proceed;

(v) The level of human health risks the cleanup will remedy;

(vi) Current property conditions, including building safety concerns, vacancy rates and the level of negative visual impact the property has on the community.

(c) The department shall maintain annual priority lists of the twenty-five (25) highest priority projects.

(d) After finalizing the priority list, the department shall contact, in writing, the eligible property owners that submitted the ten (10) highest ranked priority projects and will set a target date for the eligible property owners to enter into a voluntary remediation agreement as described in subsection (1) of section 39-7205, Idaho Code.

(e) The department may bypass a project, and submit in its place the next highest priority project on the project list, for any of the following reasons:

(i) The eligible property owner fails to enter into a voluntary remediation agreement by the target date established by the department;

(ii) The eligible property owner, in writing, withdraws its request to participate; or

(iii) The voluntary remediation agreement is terminated or rescinded by the department prior to commencement of remediation as described in the voluntary remediation agreement approved by the department.

The department shall notify the bypassed eligible property owner of the reason or reasons for the bypass.

(5) Eligible property owners may request a community investment rebate by submitting documentation and certifications enumerated in paragraphs (a) through (c) of this subsection to the department. Eligible property owners shall submit this information no more than sixty (60) days after the department issues a certificate of completion for the project. Eligible property owners must receive a written certificate of completion from the department before the department may certify qualifying remediation costs or provide a community reinvestment rebate. Information to be submitted includes:

(a) Copies of contracts and documentation of contract negotiations, accounts, invoices, sales tickets, or other payment records from purchases, sales, leases, or other transactions involving actual costs incurred completing remediation activities in accordance with the work plan approved by the department;

(b) Notarized documentation completed and signed by the participant certifying that all information contained in the application, including all records of claims, costs incurred, and costs paid, are true and correct and constitute qualifying remediation costs;

(c) Notarized documentation completed and signed by a technical professional certifying that a technical professional oversaw all remediation work plan activities and that all costs associated with documents submitted pursuant to this subsection constitute qualifying remediation costs.

(6) Community reinvestment rebate requests shall be reviewed and certified as follows:

(a) The department shall review each community reinvestment rebate request and determine whether the request is complete. If the department determines the request is incomplete, the department shall return the request, with the deficiencies indicated, to the eligible property owner by certified mail;

(b) Once a community reinvestment rebate request is deemed complete, the department shall review the request and determine the project's qualifying remediation costs. The department shall then issue a certification of the qualifying remediation costs for all those costs found to be reasonable by the department;

(c) The department shall issue the eligible property owner a community reinvestment rebate in the amount it certified as qualified remediation costs no more than thirty (30) days after department certification;

(d) Any eligible property owner or technical professional determined in a civil enforcement action to have submitted a false statement, representation or certification in any application, record, report, plan or other document submitted to the department, shall reimburse the state of Idaho for moneys wrongfully rebated and shall be liable for civil penalties and expenses incurred by the department in accordance with chapter 1, title 39, Idaho Code.

(7) Eligible property owners that receive a community investment rebate are not eligible to receive the property tax exemption established under section 63-602BB, Idaho Code.

[39-7211, added 2006, ch. 308, sec. 3, p. 949.]