

TITLE 39
HEALTH AND SAFETY

CHAPTER 74
IDAHO SOLID WASTE FACILITIES ACT

39-7401. LEGISLATIVE FINDINGS AND PURPOSES. (1) The legislature finds:

- (a) That adverse public health and environmental impacts can result from the improper land disposal of solid waste and that the need for establishing safe sites with adequate capacity for the disposal of solid waste is a matter of statewide concern and necessity; and
- (b) That the resource conservation and recovery act (42 U.S.C. sec. 6901, et seq.) as amended, and regulations adopted pursuant thereto, establish complex, detailed and costly provisions for the location, design, operation and monitoring of solid waste disposal sites, including such sites as may be operated pursuant to the responsibility established in chapter 44, title 31, Idaho Code; and
- (c) That a state program to implement flexible standards provided in 40 CFR 258, if approved by the U.S. environmental protection agency, enables a state to take advantage of site specific factors in the design and operation of solid waste facilities and flexibility in meeting federal criteria set forth in that regulation; and
- (d) That 40 CFR 258 provides that such a program of flexible standards requires approvals by a designated state agency; and
- (e) That chapter 1, title 39, Idaho Code, vests the department of environmental quality with the responsibility to issue a certificate of suitability concerning prospective solid waste landfill sites, to approve solid waste facility and ground water monitoring programs and to provide approvals pursuant to 40 CFR 258; and
- (f) That chapter 44, title 31, Idaho Code, imposes on the counties the primary responsibility for the development and operation of a solid waste management system; and
- (g) That chapter 4, title 39, Idaho Code, vests the health districts with the primary responsibility for the review of solid waste facility operations plans and the enforcement of solid waste management operations; and
- (h) That the coordination and timeliness of response to federal law on the part of all public officials within the state is critical to compliance with federal regulations, the ability of each affected agency to carry out their statutory responsibilities and the avoidance of excessive construction and public expenditures.

(2) Therefore, it is the intent of the legislature to establish a program of solid waste management which complies with 40 CFR 258 and facilitates the incorporation of flexible standards in facility design and operation. The legislature hereby establishes the solid waste disposal standards and procedures outlined herein and a facility approval process for the state of Idaho, the political subdivisions thereof, and any private solid waste disposal site owner in order to facilitate the development and operation of solid waste disposal sites, to effect timely and responsible completion of statutory duties and to ensure protection of human health and the environment, to protect the air, land and waters of the state of Idaho.

[39-7401, added 1992, ch. 331, sec. 1, p. 973; am. 1993, ch. 139, sec. 1, p. 343; am. 2001, ch. 103, sec. 67, p. 304.]

39-7402. APPLICABILITY. (1) The standards and procedures set forth in this chapter apply to owners and operators of new municipal solid waste land-fill (MSWLF) units, existing MSWLF units, and lateral expansions of existing MSWLF units, except as otherwise specifically provided.

(2) The requirements of this chapter do not apply to MSWLF units that ceased to accept waste on or prior to October 9, 1991.

(3) MSWLF units that receive waste after October 9, 1991, but stop receiving waste in conformance with the provisions of 40 CFR 258.1(d), are exempt from the requirements of this chapter, except as expressly provided herein.

(4) All MSWLF units that receive waste on or after October 9, 1993, must comply with all of the requirements of this chapter, unless otherwise allowed in 40 CFR 258.1(d), (e) or (f).

(5) MSWLF units failing to satisfy these standards shall cease operation and shall not accept municipal solid waste for disposal by order of the department of environmental quality and/or the district health department until provisions of this chapter are complied with unless a compliance schedule has been approved by the director of the department of environmental quality and/or the district health department.

(6) MSWLF units failing to satisfy the requirements set forth in this chapter are considered open dumps for purposes of state solid waste management planning and are prohibited under section 4005 of RCRA.

(7) MSWLF units containing sewage sludge and which fail to satisfy the criteria set forth in 40 CFR 258 violate sections 309 and 405(e) of the clean water act.

[39-7402, added 1992, ch. 331, sec. 1, p. 974; am. 1993, ch. 139, sec. 2, p. 344; am. 1994, ch. 75, sec. 2, p. 160; am. 2001, ch. 103, sec. 68, p. 304.]

39-7402A. EXCLUDED FACILITIES. This chapter shall not apply to any facility subject to the provisions of subtitle C of RCRA, the hazardous waste management act of 1983, as amended (section 39-4401, et seq., Idaho Code) or the state hazardous waste facility siting act, as amended (section 39-5801, et seq., Idaho Code).

[(39-7402A) 1992, ch. 292, sec. 2, p. 892; am. and redesig. 1993, ch. 139, sec. 3, p. 345.]

39-7403. DEFINITIONS. As used in this chapter:

(1) "Active portion" means that part of a facility or unit that has received or is receiving wastes and that has not been closed in accordance with 40 CFR 258.60.

(2) "Agricultural wastes" means wastes generated on farms resulting from the production of agricultural products including, but not limited to, manures and carcasses of dead animals weighing each or collectively in excess of fifteen (15) pounds but do not include wastes that are classified as hazardous.

(3) "Applicant" means the owner or the operator with the owner's written consent.

(4) "Aquifer" means a geological formation, group of formations, or a portion of a formation capable of yielding significant quantities of ground water to wells or springs.

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

(6) "Buffer zone" means that part of a facility that lies between the active portion and the property boundary.

(7) "Clean soils and clean dredge spoils" means soils and dredge spoils which are not hazardous wastes or problem wastes as defined in this section.

(8) "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses and other nonmanufacturing activities, excluding residential and industrial wastes.

(9) "Commercial solid waste facility" means a facility owned and operated as an enterprise conducted with the intent of making a profit by any individual, association, firm, or partnership for the disposal of solid waste, but excludes a facility owned or operated by a political subdivision, state or federal agency, municipality or a facility owned or operated by any individual, association, firm or partnership exclusively for the disposal of solid waste generated by such individual, association, firm or partnership.

(10) "Construction/demolition waste" means the waste building materials, packaging and rubble resulting from construction, remodeling, repair and demolition operations on pavements, houses, commercial buildings and other structures. Such waste includes, but is not limited to, bricks, concrete, other masonry materials, soil, rock, lumber, road spoils, rebar, paving materials and tree stumps. Noninert wastes and asbestos wastes are not considered to be demolition waste for the purposes of this chapter.

(11) "Contaminate" means to allow discharge of a substance from a landfill that would cause:

(a) The concentration of that substance in the ground water to exceed the maximum contamination level (MCL) specified in 40 CFR 258.40, Idaho drinking water standards; or

(b) A statistically significant increase in the concentration of that substance in the ground water where the existing concentration of that substance exceeds the maximum contamination level specified in paragraph (a) of this subsection; or

(c) A statistically significant increase above background in the concentration of a substance which:

(i) is not specified in paragraph (a) of this subsection; and

(ii) is a result of the disposal of solid waste; and

(iii) has been determined by the department to present a substantial risk to human health or the environment in the concentrations found at the point of compliance.

(12) "County" means any county in the state of Idaho.

(13) "Cover material" means soil or other suitable material that is used to protect the active portion of the MSWLF unit.

(14) "Director" means the director of the Idaho department of environmental quality.

(15) "Existing MSWLF unit" means any municipal solid waste landfill unit that is receiving solid waste as of the applicable date specified in 40 CFR 258.1(e).

(16) "Facility" means all contiguous land and structures, buffer zones, and other appurtenances and improvements on the land used for the disposal of solid waste.

(17) "Floodplain" means the area encompassed by the one hundred (100) year flood as defined by applicable federal emergency management agency (FEMA) flood insurance maps or, if no map exists, then as defined in 40 CFR 258.11.

(18) "Ground water" means water below the land surface in a zone of saturation.

(19) "Health district" means one (1) of the seven (7) district health departments of the state of Idaho.

(20) "Holocene fault" means a fault characterized as a fracture or a zone of fractures in any material along which strata on one (1) side have been displaced with respect to that on the other side and holocene being the most recent epoch of the quaternary period, extending from the end of the pleistocene epoch to the present.

(21) "Household waste" means any solid waste, including garbage, trash and sanitary waste in septic tanks, derived from households, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas.

(22) "Industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under subtitle C of RCRA. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer and agricultural chemicals; food and related products and byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

(23) "Inert wastes" means noncombustible, nonhazardous, nonputrescible, nonleaching solid wastes that are likely to retain their physical and chemical structure under expected conditions of disposal, including resistance to biological attack.

(24) "Landfill" means an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well or waste pile.

(25) "Landspreading disposal facility" or "land application unit" means a facility that applies sludges or other solid wastes onto or incorporates solid waste into the soil surface, excluding manure spreading operations, at greater than agronomic rates and soil conditioners and immobilization rates.

(26) "Lateral expansion" means a horizontal expansion of the waste boundaries of an existing MSWLF unit.

(27) "Leachate" means a liquid that has passed through or emerged from solid waste and contains soluble, suspended or miscible materials removed from such waste.

(28) "Limited purpose landfill" means a landfill that receives solid waste of limited type with known and consistent composition other than wood wastes, municipal solid waste, inert waste and construction/demolition waste.

(29) "Liquid waste" as defined in 40 CFR 258.28(c) (1).

(30) "Monofill" means a landfill which contains a specific waste whose waste stream characteristics remain unchanged over time and may include special wastes, problem wastes or other consistent characteristic wastes but do not include wastes regulated under any other applicable regulations.

(31) "Municipal solid waste landfill unit (MSWLF)" means a discrete area of land or an excavation that receives household waste, and that is not a

land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 CFR 257.2. A MSWLF unit also may receive other types of RCRA subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion.

(32) "New MSWLF unit" means any municipal solid waste landfill unit that has not received waste prior to October 9, 1993, or prior to October 9, 1995, if the MSWLF unit meets the conditions specified in 40 CFR 258.1(f)(1).

(33) "Open burning" means the combustion of solid waste without: (a) control of combustion air to maintain adequate temperature for efficient combustion; (b) containment of the combustion reaction in an enclosed device to provide sufficient resident time and mixing for complete combustion; and (c) control of the emission of the combustion products.

(34) "Operator" means the person(s) responsible for the overall operation of a facility or part of a facility.

(35) "Owner" means the person(s) who owns a facility or part of a facility.

(36) "Permeability" means the capacity of a material to transmit a liquid. For the purposes of this chapter permeability is expressed in terms of hydraulic conductivity of water in centimeters-per-second units of measurement.

(37) "Person" means an individual, association, firm, partnership, political subdivision, public or private corporation, state or federal agency, municipality, industry, or any other legal entity whatsoever.

(38) "Pile" or "waste pile" means any noncontainerized solid, nonflowing waste that is accumulated for treatment or storage.

(39) "Plan of operation" means the written plan developed by an owner or operator of a MSWLF unit detailing how the facility is to be operated during its active life, during closure, and throughout the post closure period.

(40) "Point of compliance" means a vertical surface located at the hydraulically downgradient intercept with the uppermost aquifer at which a release from a waste management unit measured as change in constituent values will trigger assessment monitoring. Point of compliance shall be used to define the facility design, location and frequency of ground water monitoring wells and corrective action.

(41) "Post closure" means the requirements placed upon the MSWLF unit after closure to ensure their environmental safety for a thirty (30) year period or until the site becomes stabilized in accordance with section 39-7416, Idaho Code.

(42) "Processing" means an operation conducted on solid waste to prepare it for disposal.

(43) "Qualified professional" means a licensed professional geologist or licensed professional engineer, as appropriate, holding current professional registration in compliance with applicable provisions of the Idaho Code.

(44) "RCRA" means the resource conservation and recovery act (42 U.S.C. sec. 6901 et seq.), as amended.

(45) "Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

(46) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(47) "Saturated zone" means that part of the earth's crust in which all voids are filled with water.

(48) "Septage" means a semisolid consisting of settled sewage solids combined with varying amounts of water and dissolved materials generated from a septic tank system.

(49) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial waste water treatment plant, water supply treatment plant or air pollution control facility exclusive of the treated effluent from a waste water treatment plant.

(50) "Solid waste" means any garbage or refuse, sludge from a waste water treatment plant, water supply treatment plant, or air pollution control facility and other discarded material including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. 1342, or source, special nuclear, or byproduct material as defined in the atomic energy act of 1954, as amended (68 Stat. 923). These regulations shall not apply to the following solid wastes:

- (a) Overburden, waste dumps and low-grade stockpiles from mining operations;
- (b) Liquid wastes whose discharge or potential discharge is regulated under federal, state or local water pollution permits;
- (c) Hazardous wastes as designated in the hazardous waste management act, chapter 44, title 39, Idaho Code;
- (d) Wood waste used for ornamental, animal bedding, mulch and plant bedding and road building purposes;
- (e) Agricultural wastes, limited to manures and crop residues, returned to the soils at agronomic rates;
- (f) Clean soils and clean dredge spoils as otherwise regulated under section 404 of the federal clean water act (PL 95-217);
- (g) Septage taken to a sewage treatment plant permitted by either the U.S. environmental protection agency or the department; and
- (h) Wood debris resulting from the harvesting of timber and the disposal of which is permitted under chapter 1, title 38, Idaho Code.

(51) "Special waste" means those wastes which require special treatment or handling after it arrives at the disposal site. The term includes, but is not limited to, asbestos containing material, petroleum contaminated soils, low-level PCB containing material, low-level dioxin containing material and uncut tires.

(52) "Statistically significant" means significant as determined by ANOVA analysis of variance as applied within 40 CFR 258.53(h) (2) or as provided by 40 CFR 258.53(g) (5).

(53) "Uppermost aquifer" means the geological formation nearest the natural ground surface that is an aquifer as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(54) "Waste management unit boundary" means a vertical surface located at the hydraulically downgradient limit of the unit. This vertical surface extends down into the uppermost aquifer.

(55) "Water quality standard" means a standard set for maximum allowable contamination in surface waters and ground water as set forth in the water quality standards for waters for the state of Idaho.

(56) "Wetlands" as defined in 40 CFR 232.2(r).

(57) "Wood waste" means solid waste consisting of wood pieces or particles generated as a byproduct or waste from the manufacturing of wood products, handling and storage of raw materials and trees and stumps. This includes, but is not limited to, sawdust, chips, shavings, bark, pulp, hog fuel and log yard waste, but does not include wood pieces or particles containing chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenate.

Undefined terms shall be given their usual and ordinary meaning within the context of the provisions of this chapter.

[39-7403, added 1992, ch. 331, sec. 1, p. 974; am. 1993, ch. 139, sec. 4, p. 345; am. 1994, ch. 75, sec. 3, p. 161; am. 1996, ch. 419, sec. 1, p. 1390; am. 2001, ch. 103, sec. 69, p. 305; am. 2007, ch. 83, sec. 8, p. 227.]

39-7404. CONSISTENCY WITH FEDERAL LAW -- STATUS OF APPENDICES. The legislature intends that the state of Idaho enact and carry out a solid waste program that will enable the state to achieve approved state status with respect to solid waste disposal facility regulation from the federal government.

The legislature finds that subtitle D of RCRA, and in particular the code of federal regulations, title 40, part 257 and 258, establish complex, detailed and costly provisions for the disposal of solid waste. By the provisions of this chapter, the legislature desires to avoid duplicative or conflicting state and federal regulatory systems and allow local MSWLF unit owners the maximum flexibility possible under 40 CFR 257 and 258, to meet the substantive goals of protection of human health and the environment with consideration for actual site and climatic conditions. At any time that 40 CFR 257 or 40 CFR 258 is amended, any additional flexibility or extension otherwise prohibited by this chapter shall be allowed as applicable.

The board may not promulgate any rule pursuant to this act that would impose conditions or requirements more stringent or broader in scope than the referenced RCRA regulations of the United States environmental protection agency or the provisions of this chapter. Until regulations are adopted, agency conclusions in appendix B through appendix H, inclusive, per the "Federal Register" of October 9, 1991, shall be used for technical guidance for relevant provisions of this chapter.

[39-7404, added 1992, ch. 331, sec. 1, p. 979; am. 1993, ch. 139, sec. 5, p. 350; am. 1994, ch. 75, sec. 4, p. 166.]

39-7405. AUTHORITY REGARDING SOLID WASTE. The local government entity with legal responsibility for disposal of solid waste pursuant to the provisions of chapter 44, title 31, Idaho Code, shall have full authority to manage and control the ownership, disposition and ultimate disposal of solid waste within its jurisdiction. It is the intention of the legislature that this grant of authority shall be construed in manner commensurate with the full extent of the duties established in chapter 44, title 31, Idaho Code.

[39-7405, added 1992, ch. 331, sec. 1, p. 979.]

39-7406. RESPECTIVE ROLES OF COUNTY, DIRECTOR AND HEALTH DISTRICT -- LIBERAL CONSTRUCTION. (1) The county, director and health district each perform key roles in statewide solid waste management. Principal jurisdiction for the various functions of solid waste regulation and management as it pertains to site selection, development, operation, and closure shall be carried out as outlined herein:

(a) Each county may select a solid waste landfill site or sites, evaluate said site(s) for compliance with site certification criteria, develop design plans for construction and operation of MSWLF unit(s), including ground water monitoring programs, provide for public review of its site certification, facility design and operation plans through the conduct of a twenty-eight (28) day public comment period, publish legal notices, serve as the repository of funds established for financial assurance, cooperate with the director and district to construct and operate a solid waste disposal system which protects human health and the environment, and perform such other solid waste related duties as may be specified in chapter 44, title 31, Idaho Code;

(b) The director shall interact and cooperate with federal agencies to secure approved state status concerning solid waste programs, administer the site selection process by requiring an owner to certify, through such professional documentation as may be required in this chapter, that the site is not encumbered by critical site limitations as set forth in section 39-7407, Idaho Code, ascertaining that such certification has been made by a qualified professional, review and approve MSWLF unit design plans, the ground water monitoring program, alternative daily cover and final cover, alternative closure and post-closure care requirements recommended to the director for approval by the district, financial assurance and any other approvals required in 40 CFR 258, prepare and/or adopt such regulations as may be necessary to implement the provisions of this chapter, and cooperate in actual site monitoring and corrective action programs; and

(c) The health district shall ascertain that operations standards are met, prepare and/or adopt technical guidance, review and recommend approval of alternative operating, closure and post-closure requirements to the director, and review and enforce all aspects of operation, closure and post closure except as specified above.

(d) All approvals required by 40 CFR 258 shall be obtained by the owner and/or applicant; and all provisions of 40 CFR 258 which provide for flexibility may be obtained by the owner and/or applicant; and the director shall have the authority to grant all such approvals in accordance with the provisions of this chapter, the duty to make a determination that an application meets standards or provides an acceptable alternative, and the duty to approve or disapprove the application in a timely manner prescribed in this chapter.

(2) This chapter shall be liberally construed to allow these public entities having jurisdiction to perform their respective roles to protect human health and the environment through expeditious and technically proper solid waste management practices, while recognizing the authority of local governments to act in their governmental capacity to perform the duties prescribed in chapter 44, title 31, Idaho Code.

[39-7406, added 1992, ch. 331, sec. 1, p. 979; am. 1993, ch. 139, sec. 6, p. 351; am. 1994, ch. 75, sec. 5, p. 166.]

39-7407. LOCATION RESTRICTIONS -- SITE CERTIFICATION. (1) The following location restrictions shall apply to all new MSWLF units, existing MSWLF units, and lateral expansions. Existing sites that cannot demonstrate compliance with the following standards for airports, floodplains, or unstable areas, must close by October 9, 1996, except as otherwise provided in 40 CFR 258.16.

(2) All MSWLF units to which this chapter is applicable shall meet the following locational standards:

(a) Shall not be located proximate to an airport runway except as provided in 40 CFR 258.10;

(b) Shall not be located in areas designated by the United States fish and wildlife service or the Idaho department of fish and game as critical habitat for endangered or threatened species of plants, fish, or wildlife, or designated as critical migratory routes for protectively managed species;

(c) Shall not be located so that the active portion is closer than two hundred (200) feet to the property line of adjacent land;

(d) Shall not be located so as to be at variance with any locally adopted land use plan or zoning requirement unless otherwise provided by local law or ordinance, provided that if no land use plan has been adopted by the local government which would have land use jurisdiction pursuant to chapter 65, title 67, Idaho Code, the site certification shall contain an analysis of the factors outlined in section 67-6508, Idaho Code, accompanied by findings and conclusions, setting forth the reasons therefore, entered by the local government with jurisdiction after a public hearing in accord with provisions of section 67-6509, Idaho Code, that the public interest would be served by locating a solid waste landfill on the site for which certification is sought;

(e) Shall not be located so that the active portion is any closer than one thousand (1,000) feet to any state or national park, or land reserved or withdrawn for scenic or natural use;

(f) Shall not be located within a one hundred (100) year flood plain except as provided in 40 CFR 258.11;

(g) Shall not be located in wetlands, except as provided in 40 CFR 258.12;

(h) A MSWLF unit active portion shall not be located:

(i) within three hundred (300) feet or the distance of the point of compliance, whichever is greater, upstream of a perennial stream, or river; and

(ii) within one thousand (1,000) feet of any perennial lake or pond.

(i) A MSWLF unit active portion shall not be located where the integrity of the site would be compromised by the presence of ground water which would interfere with construction or operation of the site;

(j) A MSWLF unit shall not be located:

(i) within two hundred (200) feet of a holocene fault as defined in 40 CFR 258.13 or adjacent to geologic features which could compromise the structural integrity of the MSWLF unit; and

(ii) within seismic impact zones except as provided in 40 CFR 258.14; and

(k) A MSWLF unit active portion shall not be located on any site whose natural state would be considered unstable in that its undisturbed character would not permit establishment of an MSWLF unit without

unduly threatening the integrity of the design due to inherent site instability. The provisions of 40 CFR 258.15 shall be followed.

[39-7407, added 1992, ch. 331, sec. 1, p. 980; am. 1993, ch. 139, sec. 7, p. 352.]

39-7408. SITE CERTIFICATION PROCEDURE. (1) It shall be the responsibility of each applicant to obtain site certification from the director. The site certification process is hereby established to ascertain compliance with the requirements of section 39-7407, Idaho Code.

(2) The site certification procedure shall be administered in the following manner:

(a) Prior to submittal of the application, the applicant may conduct a site tour for the director, health district and all other public agencies with jurisdiction to familiarize the agencies with characteristics of the site and site surroundings.

(b) The applicant may then submit an application to the director. The application shall address each of the criteria set forth in section 39-7407, Idaho Code, explaining the technical findings regarding each.

(c) Wherever technical evaluation of relevant information is required, a qualified professional, as appropriate, shall certify compliance with the requisite criteria.

(d) When the application is submitted to the director, the applicant shall publish legal notice of submittal of the application in the newspaper published in the county as determined by the criteria in section 31-819, Idaho Code, and shall make the application available for public inspection and copying. The date of publication of such notice shall begin a twenty-eight (28) day comment period during which written comments concerning the application may be submitted to the director.

(e) The director shall act upon the application within twenty-one (21) days of the end of the comment period set forth above and shall enter a decision either certifying the site or rejecting the application. The director shall review the site certification application, not contravening the opinion of the applicant's qualified professional(s) without reliable empirical evidence that the affirmations in the application are erroneous. Upon finding that the criteria of section 39-7407, Idaho Code, have been affirmed by qualified professionals, the director shall certify the site. Any rejection of a site certification application shall be accompanied by findings in writing expressly stating the criteria insufficiently documented and/or violated and the evidence relied upon in making such determination. Failure of the director to act within twenty-one (21) days shall constitute site certification. An applicant shall be provided an opportunity to appeal any denial of certification.

(f) Site certification is transferable with ownership of the site.

(g) Within ten (10) working days of receipt of certification from the director, the applicant shall publish notice in the newspaper provided for in subsection (d) of this section, informing the public that certification of the site has been approved.

[39-7408, added 1992, ch. 331, sec. 1, p. 982; am. 1993, ch. 139, sec. 8, p. 354.]

39-7408A. SITE CERTIFICATION PROCEDURE FOR COMMERCIAL SOLID WASTE FACILITIES. In addition to obtaining site certification as provided in section

39-7408, Idaho Code, no owner or operator of a commercial solid waste facility shall construct, expand or enlarge such a facility without a siting license from the director. Commercial solid waste facilities constructed and in operation on the effective date of this section are not required to obtain a siting license except to expand or enlarge such facilities.

[39-7408A, added 1996, ch. 419, sec. 2, p. 1394.]

39-7408B. SITE REVIEW PANELS -- MEMBERS, CHAIRMAN, QUORUM, MEETINGS, STAFF. (1) A site review panel shall be established to insure public input in the licensing process, to recommend to the director conditions which should be included in a siting license and to recommend to the director whether a particular facility should or should not be constructed, expanded or enlarged.

(2) A panel shall consist of eight (8) members to be appointed as follows:

(a) Three (3) members shall be the director of the department of environmental quality or his designee, the director of the Idaho transportation department or his designee and the director of the department of water resources or his designee.

(b) One (1) member shall be a public member appointed by the governor. The public member shall be an environmental professional, shall serve as chairman of the panel and shall be a voting member. A member who is a public member shall be appointed to serve on site review panels only until the particular siting license application subject to their review is approved, or until the application is rejected and is no longer subject to their review.

(c) Two (2) members shall be appointed by the city council of the city located closest to or in which the commercial solid waste facility is proposed to be located, at least one (1) of whom shall be a resident of the city. The members serving pursuant to this subsection shall serve until the particular siting license application subject to their review is approved, or until the application is rejected and is no longer subject to their review.

(d) Two (2) members shall be appointed by the county commission and be residents of the county where the commercial solid waste facility is proposed to be located. The members serving pursuant to this subsection shall serve until the particular siting license application subject to their review is approved, or until the application is rejected and is no longer subject to their review.

(e) A person nominated to represent a city or county shall not have a conflict of interest, as that term is defined in section 74-403, Idaho Code, or derive any economic gain as that term is defined in section 74-403, Idaho Code, from the location or siting of the proposed commercial solid waste facility.

(3) The director shall notify the city council of the nearest city and the board of county commissioners of a siting license application filed with the department, and shall instruct the city and county to appoint the necessary members to a panel.

(4) Five (5) of the eight (8) members of the panel shall constitute a quorum for the transaction of business of the panel and the concurrence of five (5) members of the panel shall constitute a legal action of the panel, provided that no meeting of the panel shall occur unless there are at least as many members present representing the city and county as there are repre-

senting the state and the public as appointed pursuant to subsections (2) (a) and (b) of this section. All meetings of the panel shall be conducted pursuant to the state open meeting law.

(5) The director shall make staff available to assist a panel in carrying out its responsibilities.

(6) Members of the panel who are not state employees shall be entitled to receive compensation as provided in section 59-509(b), Idaho Code.

[39-7408B, added 1996, ch. 419, sec. 2, p. 1395; am. 2001, ch. 103, sec. 70, p. 310; am. 2015, ch. 141, sec. 98, p. 449.]

39-7408C. SITING LICENSE APPLICATION -- FEE -- RULES. (1) An application for a siting license shall include:

- (a) The name and residence of the applicant;
- (b) The location of the proposed commercial solid waste facility;
- (c) Engineering, hydrogeologic and air quality information to indicate compliance with technical criteria as may be provided by law;
- (d) A description of the types of wastes proposed to be handled at the facility;
- (e) Information showing that harm to scenic, public health, historic, cultural or recreational values is not substantial or can be mitigated;
- (f) Information showing that the risk and impact of accident during transportation of solid waste is not substantial or can be mitigated;
- (g) Information showing that the impact on local government is not adverse regarding health, safety, cost and consistency with local planning and existing development or can be mitigated;
- (h) Financial information to indicate the applicant's financial capability to construct, operate and close a commercial solid waste facility.

(2) Within thirty (30) days after receipt of the application, the director shall determine whether it is complete. If it is not complete, the director shall notify the applicant and state the areas of deficiency.

(3) The application shall be accompanied by a siting license fee. The director shall establish by rule the scale for determining the siting license application fee. The fee shall not exceed seven thousand five hundred dollars (\$7,500) and shall be based on the cost to the department of reviewing the siting license application. The scale shall be based on characteristics including the site size, projected waste volume, and hydrogeological and atmospheric characteristics surrounding the site. Fees received pursuant to this section may be expended by the director to pay the actual, reasonable and necessary costs incurred by the department in acting upon a siting license application.

(4) The director shall promulgate rules in compliance with chapter 52, title 67, Idaho Code, to implement the provisions of this section.

[39-7408C, added 1996, ch. 419, sec. 2, p. 1396.]

39-7408D. DUTIES OF THE DIRECTOR RELATIVE TO SITING APPLICATIONS. (1) Upon receipt of a complete siting license application, the director or an authorized representative of the director shall:

- (a) Notify the permanent panel members, the city and/or county in which the commercial solid waste facility is located or proposed to be located, the director of the department of fish and game, the director of the Idaho state police, and other state agencies as deemed appropriate by the director.

(b) Publish a notice that the application has been received, as provided in section 60-109, Idaho Code, in a newspaper having major circulation in the county and the immediate vicinity of the proposed commercial solid waste facility. The notice shall contain a map indicating the location of the proposed commercial solid waste facility, a description of the proposed action and the location where the application may be reviewed. The notice shall describe the procedure by which the siting license may be granted.

(2) Upon notification by the director, the chairman shall immediately notify the representatives of the state to the panel and the public members. The chairman shall also notify the applicable county and city for their appointment of members as provided in subsection (2) of section 39-7408B, Idaho Code. Within thirty (30) days after the notification, the board of commissioners of the county and the city council shall select the members to serve on the panel. The panel shall be created at that time and notification of the creation of the panel shall be made to the chairman.

(3) Within thirty (30) days after appointment of panel members, the panel shall meet to review and establish a timetable for the consideration of the draft site license.

(4) The panel shall:

(a) Set a date and arrange for publication of notice of a public hearing in a newspaper having major circulation in the vicinity of the proposed site, at its first meeting. The public notice shall:

(i) Contain a map indicating the location of the proposed commercial solid waste facility, a description of the proposed action, and the location where the application for a siting license may be reviewed and where copies may be obtained;

(ii) Identify the time, place and location for the public hearing held to receive public comment and input on the application for a siting license;

(b) Publish the notice not less than thirty (30) days before the date of the public hearing and the notice shall be, at a minimum, a twenty (20) days' notice as provided in section 60-109, Idaho Code.

(5) Comment and input on the proposed commercial solid waste facility may be presented orally or in writing at the public hearing, and shall continue to be accepted in writing by the panel for thirty (30) days after the public hearing date. The public hearing shall be held in the same county as the proposed site. If the proposed site is adjacent to a city or populated area in a neighboring county, it is recommended that public hearings also be held in the neighboring county.

(6) The panel shall consider, but not be limited to, the following:

(a) The risk of the spread of disease or impact upon public health from improper treatment, storage, or incineration methods;

(b) The impact on local units of government where the proposed commercial solid waste facility is to be located in terms of health, safety, cost and consistency with local planning and existing development. The panel shall also consider city and county ordinances, permits or other requirements and their potential relationship to the proposed commercial solid waste facility;

(c) The nature of the probable environmental and public health impact;

(d) The financial capability of the applicant to construct, operate and close the commercial solid waste facility.

(7) The panel shall consider the concerns and objections submitted by the public. The panel shall facilitate efforts to provide that the concerns and objections are mitigated by proposing additional conditions regarding the construction of the commercial solid waste facility. The panel may propose conditions which integrate the provisions of the city or county ordinances, permits or requirements.

(8) Within one hundred eighty (180) days after creation, the panel shall recommend to the director that the license be issued, issued with conditions, or rejected. The director shall act on a license application within sixty (60) days after receipt of the panel's recommendation. If the panel recommends conditions, a clear statement of the need for a condition must be submitted to the director. If the panel recommends rejection, a clear statement of the reasons for the denial must be submitted to the director.

(9) The director shall issue, issue with conditions or reject a siting license only as recommended by the siting panel. The director may reconvene a siting panel and request reconsideration of its original recommendation prior to the director's final action.

(10) An applicant or any person aggrieved by a decision of the director pursuant to this chapter may within sixty (60) days of the director's decision, and, after all remedies have been exhausted under the provisions of this chapter, seek judicial review under the procedures provided in chapter 52, title 67, Idaho Code, and may also seek de novo judicial review.

[39-7408D, added 1996, ch. 419, sec. 2, p. 1396; am. 2000, ch. 469, sec. 102, p. 1555.]

39-7409. STANDARDS FOR DESIGN. (1) Applicability. These standards apply to new MSWLF units and lateral expansions of existing facilities as provided in 40 CFR 258.40.

(2) Liner designs. All owners or operators of MSWLF units shall use one (1) of the following designs:

(a) Composite liner design. A liner as provided under 40 CFR 258.40 (b) and shall include a leachate collection system as provided under 40 CFR 258.40(a)(2); or

(b) Alternate liner design. A site-specific design based upon environmental performance, as allowed under 40 CFR 258.40(a)(1) which will ensure that the concentration values listed in table 1, 40 CFR 258.40, or as amended, will not be exceeded in the uppermost aquifer at the relevant point of compliance. This design shall demonstrate consideration of site specific factors as provided in 40 CFR 258.40(c) and shall include a leachate collection system as provided under 40 CFR 258.40(a)(2); or

(c) Arid design. A site-specific design based upon environmental performance, as allowed under 40 CFR 258.40(a)(1) which will ensure that the concentration values listed in table 1, 40 CFR 258.40, or as amended, will not be exceeded in the uppermost aquifer at the relevant point of compliance. This design shall use both field collected data and predictions that maximize contaminant migration for demonstrating no potential for migration. This design will apply to locations having less than twenty-five (25) inches of precipitation annually, net evaporative losses greater than thirty (30) inches annually, and holding capacity in native soils greater than annual absorbance; and

(i) solid waste is deposited no less than fifty (50) feet above the seasonal high level of ground water in the uppermost aquifer;

(ii) the geologic formation beneath the site and above the uppermost aquifer must have capillary capacities greater than the projected maximum volume of leachate generated during the active life of the MSWLF unit; and

(iii) "no potential for migration" is demonstrated when the geologic formation beneath the site and above the uppermost aquifer has sufficient hydrogeological characteristics and holding capacity adequate to contain all hazardous constituents generated during the active life, closure and post-closure care periods.

(3) Point of compliance. For each MSWLF unit, the relevant point of compliance shall be set by a qualified professional by criteria contained in 40 CFR 258.40 (d) (1) through (d) (8), inclusive, subject to approval by the director.

(4) Leachate discharge shall comply with permitted discharge requirements under the federal clean water act (PL 95-217) and federal storm water discharge regulations (40 CFR part 122).

[39-7409, added 1992, ch. 331, sec. 1, p. 982; am. 1993, ch. 139, sec. 9, p. 355.]

39-7410. GROUND WATER MONITORING DESIGN. (1) Applicability. These requirements apply to MSWLF units except:

(a) When the MSWLF unit meets the conditions for exemption in 40 CFR 258.1(f); provided however, that the director may, at his discretion, require monitoring of a MSWLF unit which meets the conditions for exemption in 40 CFR 258.1(f), if necessary to protect ground water resources. If the director does require ground water monitoring of such MSWLF unit, a method other than the ground water monitoring wells required in this section and in 40 CFR 258.51 through 258.55 may be used to detect a release of contamination from the unit; or

(b) When suspended upon demonstration in accordance with 40 CFR 258.50 that there is no potential for migration of hazardous constituents from the MSWLF unit to the uppermost aquifer during the active life of the unit and the post-closure care periods when certified by a qualified professional and approved by the director.

(2) Ground water monitoring program. All monitoring programs shall be conducted in a manner consistent with the guidance of relevant portions of appendix F per the "Federal Register" of October 9, 1991. The schedule for compliance as provided by 40 CFR 258.50 shall apply unless an alternative schedule is approved by the director.

(a) A ground water monitoring system must be installed that consists of a sufficient number of wells, installed at appropriate locations and depths, to conform with the requirements of 40 CFR 258.51(a) and (d).

(b) A multiunit ground water monitoring system may be constructed instead of separate ground water monitoring systems for each MSWLF unit as provided in 40 CFR 258.51(b).

(c) Monitoring wells must be cased in a manner that maintains the integrity of the monitoring well bore hole as provided in 40 CFR 258.51(c). Wells must be constructed in such a manner as to prevent contamination of the samples, the sampled strata, and between aquifers and water bearing strata, and in accordance with Idaho department of water resources, well construction standards and the monitoring well standards of the national ground water association.

(3) Point of compliance. For each MSWLF unit, the relevant point of compliance shall be set as a function of site and monitoring program design subject to the approval of the director. The relevant point of compliance for purposes of MSWLF unit design, well location and corrective action shall be:

- (a) Located within the flow pathway(s) predicted from the results of the hydrogeologic investigation;
- (b) No more than one hundred fifty (150) meters downgradient from the waste management unit boundary;
- (c) On contiguous property owned, or otherwise subject to possessory rights by the MSWLF owner;
- (d) Shall be identified by the qualified professional on all reports and documents pertaining to analysis of ground water protection measures; and
- (e) Determined in consideration of factors provided in 40 CFR 258.40(d).

(4) Ground water characterization, sampling and analysis requirements.

- (a) The ground water monitoring system must include sampling and analysis procedures consistent with 40 CFR 258.53.
- (b) Monitoring wells shall be tested for the constituents listed in 40 CFR 258, appendix I, plus temperature, unless otherwise authorized by the director as provided in 40 CFR 258.54.
- (c) Background values will be based on an independent sample from each well sampled at three (3) month intervals in a one (1) year period.
- (5) Detection monitoring program.

(a) Detection monitoring is required throughout the active life and post-closure care period at MSWLF units as provided in 40 CFR 258.54 at all ground water monitoring wells as defined in 40 CFR 258.51(a) (1) and (a) (2) for constituents listed in 40 CFR 258, appendix I.

(b) Each well shall be monitored on a semiannual basis after background characterization. Alternative constituents and sampling frequency may be approved by the director based upon considerations as defined in 40 CFR 258.54 (a) (2) and (b). Requests for alternative constituents or frequency shall be based on a report certified by a qualified professional.

(c) Each ground water sample event must include a determination of the ground water surface elevation, flow direction and rate.

[(39-7410) 1992, ch. 331, sec. 1, p. 986; am. and redesign. 1993, ch. 139, sec. 11, p. 356; am. 1994, ch. 75, sec. 6, p. 167; am. 1997, ch. 11, sec. 1, p. 11.]

39-7411. DESIGN REVIEW PROCEDURE. (1) Design of a MSWLF unit shall not be reviewed until site certification has been obtained. After obtaining site certification, an applicant shall produce design plans and specifications which comply with the design standards set forth in sections 39-7409 and 39-7410, Idaho Code. The responsibility for complying with said standards shall rest solely with the applicant of the site.

(2) An applicant may notify the director of its intent to initiate a MSWLF site design and meet with the director to discuss standards, schedule, design process to be used and particular concerns of the director.

(3) The applicant shall conduct aerial and cadastral surveys, relevant studies, and prepare a hydrogeologic report which will satisfy standards and

other provisions in accordance with this chapter and applicable state regulations. Specific climatic data and verification of location restrictions shall be included.

(4) The applicant shall submit findings and a tentative design plan, including preliminary schematic design of environmental monitoring systems to the director as a result of the preliminary design investigation. The submittal initiates a twenty-eight (28) day period for department review and comment. Concurrent with the submittal to the director, the applicant shall publish notice in a newspaper of general circulation, as determined by the criteria in section 31-819, Idaho Code, in the county wherein the MSWLF would be located notifying the public that a preliminary design plan has been submitted to the director and is available for public review. The date of publication initiates a twenty-eight (28) day period for department review and public comment. Written public comments concerning the proposed design plan shall be compiled by the director. The compiled public comments received by the director and those generated by the director shall be transmitted to the owner, and the applicant if other than the owner, no more than thirty-five (35) days after the date of publication of the notice or seven (7) days after the end of the public comment period, whichever is later.

(5) When a response is received from the director, the applicant may submit the facility design, ground water monitoring program, and specifications, in a final design report which addresses standards established by this chapter, applicable federal regulations and other relevant provisions of state law. Said submittal shall include a site-specific analysis of hydrogeologic conditions, location restrictions and other factors relevant to long-term site integrity, and shall address comments from the public and the director related to objective standards in the final design report. Said submittal shall be prepared by a qualified professional in a manner consistent with sound professional practices. The submittal of this final design report initiates a fifty-six (56) day period for the director's review.

(6) Concurrent with submittal to the director, the applicant shall release the final design report, including all supporting reports, plans and documentation, to the extent practicable, for public comment by placing it for inspection at every public library within the county where the proposed MSWLF would be located. Copies of the submittal shall be made available for possession, at the cost of duplication, at a public location in the county seat of the county where the proposed MSWLF unit would be located. The applicant shall publish notice in a newspaper of general circulation, as determined by the criteria in section 31-819, Idaho Code, in the county wherein the MSWLF would be located notifying the public that a final design report has been submitted to the director and is available for public review. Public comments shall be submitted, in writing, to the director within twenty-eight (28) days of the date of publication.

(7) No more than fifty-six (56) days after publication of notice of submittal, or twenty-eight (28) days after the close of an advertised public comment period, whichever is later, the director shall enter a decision either approving or disapproving the final design. The decision shall be in writing and shall make one (1) of the following findings:

(a) Based upon the information submitted, design complies with applicable standards.

(b) Based upon the information submitted, the design does not comply with applicable standards, setting forth with specificity the material standards not met or insufficiently documented.

(c) Failure to comport with professional standards.

Failure of the director to respond to an applicant's request for approval in the manner provided herein shall constitute approval of the request. Construction shall not be initiated on a MSWLF unit until approval has been granted, except that construction prior to approval may be initiated prior to July 1, 1993, for a MSWLF unit which meets the design standard of section 39-7409(2) (a), Idaho Code. The applicant shall publish notice of approval in a newspaper of general circulation when affirmative or defacto approval is given.

(8) Upon entering a decision of disapproval, an automatic twenty-one (21) day stay of proceedings shall occur unless waived by the applicant. During the twenty-one (21) day stay, the director and the applicant may meet and confer to attempt to reconcile differences. At any point during that twenty-one (21) day period the director and applicant can reach an accord and approval can be granted, with construction authorized at that point. The applicant can tender a written waiver of this twenty-one (21) day reconciliation period which would initiate the requirement provided for in subsection (9) of this section. At any time in the review process or post-decision reconciliation process the applicant and director may mutually agree to extend the timeframes contained herein and may resort to mediation, arbitration, or binding arbitration to resolve differences as they mutually see fit.

(9) If differences are not reconciled in the period set forth in subsection (8) of this section, the director shall notify the owner that the design remains disapproved. Said notice of disapproval shall incorporate the rationale for disapproval contained in the original decision of disapproval, deleting any issues resolved in the post-decision reconciliation period.

(10) Following final action by the director the applicant may file a petition with the district court, with concurrent notice to the director, in the county where the proposed MSWLF would be located for expedited appellate review of the director's decision. The petition shall set forth the specific basis for the appeal and shall identify the legal and factual basis for contesting the disapproval by the director. The director shall submit a copy of the entire record upon which its disapproval has been based no more than fourteen (14) days after the date the applicant's petition for review has been filed. Only information which has been available during the design review process may be used in the judicial review process.

(11) All issues claimed as a basis of appeal by the applicant shall be addressed in a memorandum filed with the petition appealing disapproval by the director. The director shall submit a reply memorandum no later than fourteen (14) days after the applicant's petition for review has been filed.

(12) Upon the record, the applicable law, the memoranda of the respective parties, and such independent technical assistance as the court may find it necessary and appropriate to retain, the court shall evaluate the applicant's petition and the decision by the director and shall render a decision no more than twenty-one (21) days after the completed record, and accompanying memorandum, if one is filed, are submitted to the court by the director. The court shall sustain the director's disapproval action if it affirmatively finds that the record contains substantial evidence that the design does not comply with standards as specified pursuant to section 39-7412(7) (b) or (c), Idaho Code. If the court finds the disapproval is not supported by substantial evidence in the record, it shall reverse the

director's action and remand the matter to the director with appropriate instructions.

(13) The procedure set forth in subsections (10) through (12) of this section are effective until January 1, 1994. On and after January 1, 1994, the applicant is entitled to judicial review pursuant to chapter 67, title 52, [title 67, chapter 52] Idaho Code. Upon waiver or expiration of the twenty-one (21) day reconciliation period, the director and the applicant shall stipulate to accelerated judicial review pursuant to court approval where the ordinary review period provided in chapter 67, title 52, [title 67, chapter 52] Idaho Code, may reasonably result in substantial increased costs to the applicant, potential violations of federal or state environmental laws or threats to the public health and environment.

[39-7411, added 1993, ch. 139, sec. 12, p. 358.]

39-7412. STANDARDS FOR OPERATION. Owners or operators of all MSWLF units shall:

- (1) Implement a program for detecting and preventing disposal of regulated hazardous wastes as provided in 40 CFR 258.20;
- (2) Provide for daily cover as provided in 40 CFR 258.21. Alternative materials or cover frequency other than daily cover may be used only as specified by the MSWLF plan of operation;
- (3) Provide disease vector control as provided in 40 CFR 258.22;
- (4) Implement a program of routine methane monitoring and control as provided in 40 CFR 258.23;
- (5) Ensure that MSWLF units do not violate any ambient air quality standard or emission standard from any emission of landfill gases, combustion or any other emission associated with a MSWLF unit as provided in 40 CFR 258.24;
- (6) Provide and control access as provided in 40 CFR 258.25;
- (7) Design, construct and maintain a run-on/run-off control system as provided in 40 CFR 258.26 to:
 - (a) Prevent all the run-on of surface waters and other liquids resulting from a maximum flow of a twenty-five (25) year storm, or snowmelt into the active portion of the MSWLF unit;
 - (b) Control the collection of the run-off of surface waters and other liquids resulting from a twenty-four (24) hour, twenty-five (25) year storm, or snowmelt, whichever is greater, from the active portion and the closed portions of a MSWLF unit; and
 - (c) Prevent the discharge of pollutants into waters of the United States and the state of Idaho as defined in 40 CFR 258.27;
- (8) Prohibit the disposal of noncontainerized liquids or sludges containing free liquids in MSWLF units except as provided in 40 CFR 258.28;
- (9) Establish an operating and recordkeeping procedure as provided in 40 CFR 258.29; and
- (10) Comply with operating procedures established by the board for implementation by the districts which are intended to assure operations which protect the public health and maintain the integrity of the landfill design.
- (11) MSWLF units that dispose of greater than twenty (20) tons per day of municipal solid waste based on an annual average shall:
 - (a) Monitor daily climatic conditions. Monitoring shall include precipitation including snow, evaporation, evaporative water temperature, air temperature, wind speed and direction; and

(b) Weigh all incoming waste or provide an equivalent method of measuring waste tonnage capable of estimating total annual solid waste tonnage.

[(39-7412) 1992, ch. 331, sec. 1, p. 985; am. and redesign. 1993, ch. 139, sec. 13, p. 360.]

39-7413. OPERATIONS PLAN REVIEW. (1) Prior to operation of a MSWLF unit, an operations plan shall be submitted to the health district with jurisdiction. It shall be the responsibility of each applicant of a MSWLF unit to certify to the health district that the provisions of section 39-7412, Idaho Code, have been complied with through development of an operating plan. No solid waste disposal facility shall accept waste without a current operating certificate from the health district with jurisdiction.

(2) The health district shall review operational plans in the same manner as the director reviews requests for site certification pursuant to section 39-7408, Idaho Code. An applicant shall provide information in the operations plan in sufficient detail to show compliance with the provisions of section 39-7412, Idaho Code, and required procedures adopted pursuant thereto. The same standards of review shall apply to an operations plan as apply to the site certification process. The health district shall accept certification by a qualified professional that standards of operation have been met upon presentation of the professional's certification of compliance and presentation of a written explanation of operational practices which will be undertaken to meet standards established in section 39-7412, Idaho Code.

(3) If an operations plan provides for alternative operating criteria requiring approval by the director as provided in 40 CFR 258, the health district shall make a decision recommending approval or disapproval. Such plan shall be submitted by the health district to the director for his review. The submittal shall be accompanied by findings of fact and the recommendation from the health district.

(4) The director shall review the recommendation submitted by the health districts and shall make a decision to approve or disapprove. The director shall review recommendations for approval using the same standards of review provided in section 39-7408(2) (e), Idaho Code.

[(39-7413) 1992, ch. 331, sec. 1, p. 986; am. and redesign. 1993, ch. 139, sec. 14, p. 361; am. 1994, ch. 75, sec. 7, p. 169.]

39-7414. ASSESSMENT MONITORING AND CORRECTIVE ACTION. (1) Applicability. These standards apply whenever a statistically significant increase over background has been detected for one (1) or more constituents listed in 40 CFR 258, appendix I or an alternative list approved in accordance with 40 CFR 258.54(a) (2).

(2) Assessment monitoring programs shall be performed in accordance with 40 CFR 258.55.

(3) Assessment of corrective measures shall be performed in accordance with 40 CFR 258.56.

(4) Selection of remedy shall be performed in accordance with 40 CFR 258.57.

(5) Implementation of corrective action program shall be performed in accordance with 40 CFR 258.58.

[39-7414, added 1993, ch. 139, sec. 15, p. 362.]

39-7415. STANDARDS FOR CLOSURE. (1) Applicability. These standards apply to all MSWLF units that receive wastes on or after October 9, 1993, except as provided by 40 CFR 258. MSWLF units that accept waste after October 9, 1991, but cease to accept waste prior to October 9, 1993, shall at a minimum comply with subsections (2) (a) and (3) of this section in addition to the "sanitary landfill closure guidance" criteria as adopted by the health district.

(2) Cover designs. Owners or operators of MSWLF units shall install one (1) of the following final cover systems:

(a) A cover as provided under 40 CFR 258.60 (a); or

(b) The cover material must be fine-grained with intrinsic permeability no greater than 1×10^{-3} cm/sec and a minimum thickness of twenty-four (24) inches; and

(i) Have capillary holding capacity greater than the projected maximum accumulated volume of water as determined by utilization of accepted water balance methodology based on local or regional twenty-five (25) year climatic records;

(ii) Annual precipitation is less than twenty-five (25) inches with net evaporative losses greater than thirty (30) inches annually;

(iii) The top six (6) inches of the cover shall be capable of sustaining shallow rooted native plant growth; and

(iv) This design shall demonstrate consideration of site specific factors as provided in 40 CFR 258.60 (b); or

(c) As provided in 40 CFR 258.60 (b).

(3) The final grade of slopes shall be greater than two percent (2%) unless otherwise supported by the post closure plan and uses approved by the health district, and the grade of side slopes not more than thirty-three percent (33%).

(4) Closure plan preparation, placement in operating record, notice of intent to close, time requirements for commencement and completion of closure activities, certification, deed notation and removal of deed notation shall be conducted as provided in 40 CFR 258.60 (c) through (j), inclusive. The deed notation and removal of deed notation shall comply with the uniform environmental covenants act, chapter 30, title 55, Idaho Code.

[39-7415, added 1992, ch. 331, sec. 1, p. 988; am. 1993, ch. 139, sec. 16, p. 362; am. 1994, ch. 75, sec. 8, p. 169; am. 2010, ch. 99, sec. 2, p. 191.]

39-7416. STANDARDS FOR POST CLOSURE CARE. (1) Applicability. Post closure maintenance standards apply to all MSWLF units that receive wastes on or after October 9, 1993, except as provided by 40 CFR 258.1.

(2) Post closure care shall be conducted as provided under 40 CFR 258.61.

[39-7416, added 1992, ch. 331, sec. 1, p. 989; am. 1993, ch. 139, sec. 17, p. 363; am. 1994, ch. 75, sec. 9, p. 170.]

39-7417. FINANCIAL ASSURANCE FOR CLOSURE, POST CLOSURE CARE AND CORRECTIVE ACTION. (1) Applicability. These requirements shall apply to new MSWLF units, existing MSWLF units and lateral expansions except as exempted in 40 CFR 258.1 (d) and 258.70 (a).

(2) The requirements of this section are effective April 9, 1995, except for MSWLF units meeting the conditions of 40 CFR 258.1 (f) (1), in which

case the effective date is October 9, 1995, or at such later date upon subsequent amendment of 40 CFR 258.70 through 258.74.

(3) All MSWLF units shall be underwritten by financial assurance provisions as provided by the following:

- (a) Closure as provided in 40 CFR 258.71;
- (b) Post closure care as provided in 40 CFR 258.72; and
- (c) Corrective action as provided in 40 CFR 258.73.

(4) The financial assurance mechanisms provided for MSWLF units shall include any mechanism or a combination of mechanisms meeting the criteria of 40 CFR 258.74.

(5) Counties may use available borrowing capability through registered warrants for a prearranged amount and preapproved by a lending institution as a financial mechanism to assure assessment monitoring and corrective action needs.

(6) Subdivisions of the state may use any method provided by law to meet the requirements of this section.

(7) MSWLF units owned or operated by subdivisions of the state that qualify under 40 CFR 258.74(f) may include any mechanism allowed to them upon adoption and publication.

(8) Financial assurance funds for MSWLF units not located on federal or state lands shall be deposited in a county trust fund in the county in which the MSWLF unit is located. The county shall act as the trustee for the trust funds, and as named coprincipal for surety bonds, letters of credit, and insurance. As trustee, the county may require an independent audit of the adequacy of the financial assurance but shall not become liable for financial assurance except in the case of default as otherwise defined by federal and state law.

[39-7417, added 1992, ch. 331, sec. 1, p. 989; am. 1993, ch. 139, sec. 18, p. 363; am. 1994, ch. 75, sec. 10, p. 170.]

39-7418. MODIFICATIONS TO SITES APPROVED UNDER THIS CHAPTER. (1) The following classes of modifications to approved sites shall require that an owner or operator amend the approved design or ground water monitoring program:

- (a) Lateral expansion outside the approved waste management unit boundary design;
- (b) Unpredictable change affecting any environmental monitoring program;
- (c) Change of liner design; or
- (d) A modification of the design or operation due to initiation of corrective action and remediation.

(2) The scope of new investigations and plan amendment shall be defined by the owner, director and health district before any modification to the decision is begun. Only those stages of the applicable approval process affected by the request for modification shall be required.

[39-7418, added 1992, ch. 331, sec. 1, p. 990; am. 1993, ch. 139, sec. 19, p. 364.]

39-7419. INSPECTIONS. (1) All MSWLF units shall be subject to routine inspection by the county, director and health district in accordance with relevant provisions of the Idaho Code.

(2) At intervals of not less than three (3) years, nor more than five (5) years, the owner, county, director and health district shall jointly conduct

a comprehensive review of the MSWLF unit for provisions contained in this chapter, technical guidance, other provisions, and the plan for design and operation, as amended. A record of the review shall be placed in the operating record of the MSWLF unit which shall be maintained by the owner and the health district with jurisdiction. Operating procedures shall be recertified at intervals of no more than three (3) years.

[39-7419, added 1992, ch. 331, sec. 1, p. 990; am. 1993, ch. 139, sec. 20, p. 364.]

39-7420. VIOLATIONS AND ENFORCEMENT. (1) Failure to comply with the requirements established in this chapter, requirements of rules established pursuant to this chapter, and reasonable conditions of approval granted pursuant to this chapter shall be unlawful. Particularly with respect to siting and operation of a municipal solid waste landfill to satisfy the requirements of chapter 44, title 31, Idaho Code, enforcement should focus upon remediation of deficiencies, rather than punishment. Penalties should be imposed where practices show disregard for protection of human health, safety and the environment.

(2) Each public agency with responsibility for enforcement of requirements established in this chapter may inspect, monitor and employ such methods of enforcement as they may be empowered to use by statute or local ordinance.

(a) The director may apply the provisions of section 39-108, Idaho Code, to insure compliance.

(b) The respective health districts or the several counties may employ the use of negotiated compliance agreements in addition to civil legal remedies and misdemeanor criminal penalties otherwise authorized in order to obtain compliance with requirements established herein.

(3) Where more than one (1) public entity undertakes enforcement efforts to obtain compliance with the provisions of this chapter, enforcement efforts should be coordinated to the greatest extent possible to minimize conflict among requirements and costs of compliance.

(4) A private right of action in behalf of any person who has been injured or damaged by any approval authorized in this chapter or violation of the terms of any approval or regulation authorized in this chapter may be maintained in accordance with the provisions of this chapter and/or the provisions of chapter 52, title 67, Idaho Code, as applicable.

(5) If a district fails to carry out responsibilities established in this chapter, the director may assume the authority otherwise to be implemented by a district.

[39-7420, added 1992, ch. 331, sec. 1, p. 990; am. 1993, ch. 139, sec. 21, p. 365.]

39-7421. RESEARCH, DEVELOPMENT AND DEMONSTRATION PERMITS. (1) The provisions of 42 U.S.C. 6945(c) (1) (B) and 40 CFR 258 allow the administrator of the United States environmental protection agency to approve state research, development and demonstration permit programs.

(2) The director shall initiate the process outlined in 40 CFR 239 by which the state may receive authorization to issue research, development and demonstration (RDD) permits in compliance with 40 CFR 258.4 at such time as:

(a) The department receives a request from any individual who expresses an intent to apply for an RDD permit; and

(b) The department and requesting individual enter into a written agreement in which the requesting individual agrees to reimburse the department for the reasonable and necessary cost to make such application.

(3) Upon receipt of state authorization to issue such permits, the director may issue an RDD permit for a new MSWLF unit, existing MSWLF unit, or lateral expansion for which the owner or operator proposes to utilize innovative and new methods which vary from either or both of the following criteria:

(a) The run-on control systems required by section 39-7412(7)(a), Idaho Code; and

(b) The liquid restrictions in section 39-7412(8), Idaho Code.

(4) Any permit issued under subsection (3) of this section shall include the following terms and conditions:

(a) The MSWLF unit shall have a leachate collection system designed and constructed to maintain less than a thirty (30) centimeter depth of leachate on the liner;

(b) Any liquids to be recirculated, injected or otherwise placed in the MSWLF unit shall be appropriate for the purposes of determining the efficacy and performance capabilities of the technology or process and shall be approved by the director;

(c) The MSWLF unit owner or operator shall install and operate a landfill gas collection and control system in accordance with emission control requirements as specified in 40 CFR part 60, and when collected in economically feasible volumes, landfill gas shall be used for energy generation.

(5) Upon receipt of state authorization to issue such permits, the director may issue an RDD permit for a new MSWLF unit, existing MSWLF unit, or lateral expansion, for which the owner or operator proposes to utilize innovative and new methods which vary from the final cover criteria of 40 CFR 258.60 (a) (1), (a) (2) and (b) (1) provided the landfill owner or operator demonstrates that the infiltration of liquid will not cause contamination of ground water or surface water, or cause leachate depth on the liner to exceed thirty (30) centimeters.

(6) Any permit issued under the provisions of this section shall include terms and conditions at least as protective as the criteria for MSWLFs to assure protection of human health and the environment. Such permits shall:

(a) Provide for the construction and operation of such facilities as necessary, for not longer than three (3) years, unless renewed as provided in subsection (8) of this section;

(b) Provide that the MSWLF unit must receive only those types and quantities of municipal solid waste and nonhazardous wastes which the director deems appropriate for the purposes of determining the efficacy and performance capabilities of the technology or process;

(c) Include such requirements as necessary to protect human health and the environment, including such requirements as necessary for testing and providing information to the director with respect to the operation of the facility;

(d) Require the owner or operator of a MSWLF unit permitted under this section to submit an annual report to the director showing whether and to what extent the site is progressing in attaining project goals. The report shall also include a summary of all monitoring and testing re-

sults, as well as any other operating information specified by the director in the permit. Annual reports shall be submitted to the director within three (3) months after the anniversary date of the approved permit or permit renewal; and

(e) Require compliance with all criteria in chapter 74, title 39, Idaho Code, except as permitted under this section.

(7) The director may order an immediate termination of all operations at the facility allowed under this section or other corrective measures at any time the director determines that the overall goals of the project are not being attained including, but not limited to, protection of human health or the environment.

(8) Any permit issued under the provisions of this section shall not exceed three (3) years and each renewal of a permit shall not exceed three (3) years.

(a) The total term for a permit for a project, including renewals, shall not exceed twelve (12) years.

(b) During permit renewal, the applicant shall provide a detailed assessment of the project showing the status with respect to achieving project goals, a list of problems and status with respect to problem resolutions, and any other requirements that the director determines necessary for permit renewal.

(c) Owners or operators requesting permit renewal shall submit the permit renewal application to the director at least six (6) months prior to the existing permit expiration date.

(9) It shall be unlawful to begin construction to implement or otherwise utilize the exemptions provided in this section without first receiving a permit from the director. Permit applications will be processed in the following manner:

(a) The director shall review the RDD permit application and each subsequent permit renewal in the same manner as the director reviews requests for design approval pursuant to section 39-7411, Idaho Code. An applicant shall provide information in the permit application in sufficient detail to address design, operating, closure, postclosure and financial assurance requirements.

(b) Each permit application and permit renewal application shall require the owner or operator to certify to the director that the information contained in the application is, to the best of his or her knowledge, accurate and true, and the MSWLF unit is in compliance with applicable law.

(10) Permit review and oversight costs incurred by the department of environmental quality, or "department," and health district shall be reimbursed by the applicant or permittee. Reimbursable review and oversight costs shall include, but are not limited to:

(a) Reasonable costs associated with the director's review of a permit application submitted pursuant to this section, including department staff time and the cost of goods and services contracted by the department in performance of the activities described in this section;

(b) Reasonable costs associated with the health district's review of portions of a permit application submitted pursuant to this section when such review is delegated to the health district by statute, rule, or agreement with the director;

(c) Reasonable costs associated with the department's and health district's oversight of permitted RDD units, including inspections and the

review of annual reports, monitoring, and testing results required pursuant to this section or required by permit, and the processing of permit amendments and terminations; and

(d) All other reasonable and necessary costs of actions taken by the department pursuant to this section.

(11) Reimbursable review and oversight costs incurred by the department and health district, as defined in subsection (10) of this section, shall be reimbursed as follows:

(a) Each permit application submitted to the director pursuant to this section shall be accompanied by a nonrefundable fee of two hundred fifty dollars (\$250) and an estimation of reimbursable review and oversight costs the department and health district may incur associated with the review of the permit application and oversight of the permit. Each permit renewal application submitted to the director pursuant to this section shall be accompanied by a nonrefundable fee of one hundred dollars (\$100) and an estimation of reimbursable review and oversight costs the department and health district may incur associated with the review and oversight of the permit renewal.

(b) If the department, in consultation with the health district, determines that the applicant's estimation of reimbursable review and oversight costs is accurate, and the submission of such funds will adequately reimburse the department and the health district for the cost of all review and oversight activities associated with that permit application or renewal application, the department shall notify the applicant, and the applicant shall submit to the department the full amount, or an installment deposit in the amount required pursuant to this subsection.

(c) If the department, in consultation with the health district, determines that the applicant's estimation of reimbursable review and oversight costs is not accurate, and the submission of such funds will not adequately reimburse the department and the health district for the cost of all review and oversight activities associated with that permit application or renewal application, the department shall notify the applicant and the application shall be returned to the applicant.

(d) Upon receipt of funds in the amount estimated by the applicant and concurred to by the department and health district, or receipt of an installment deposit in the amount required under this subsection, the director shall initiate permit application review or permit renewal review.

(e) Once the department and the health district concur with an applicant's estimation of reimbursable review and oversight costs, and the department provides the applicant notice thereof, a permit applicant or permit renewal applicant may submit to the department the reimbursement funds in their entirety or an installment deposit of two thousand five hundred dollars (\$2,500). Should funding be required for costs incurred in excess of the initial two thousand five hundred dollar (\$2,500) deposit, the department shall notify the applicant of required successive deposits in the amount of two thousand five hundred dollars (\$2,500). The department shall pass along funds collected on behalf of the health district for reimbursable review and oversight costs incurred by such district within sixty (60) days of receipt of such funds from the applicant, or within sixty (60) days of receipt of a certified request for such funds from the health district, whichever

is later. Any unused portion of the reimbursement funds, deposit, or successive deposit shall be returned to the applicant within sixty (60) days of the director's final decision to issue or deny a permit or permit renewal pursuant to this section. If the applicant fails to submit a successive deposit, the department shall suspend review of the permit application or renewal application, and the director shall be relieved of any applicable statutory or regulatory permit application or renewal application review deadlines during the review suspension.

(f) The director shall, as a condition of renewal, require renewal applicants to reimburse the department for previously uncaptured reimbursable permit review and oversight costs incurred by the department or health district during the prior permit term.

(g) Upon request, the department shall provide documentation to the applicant to aid in the development of the applicant's estimation of reimbursable review and oversight costs or to support the department's claims and any health district claims for such reimbursement.

(h) Funds submitted to the department pursuant to this section shall not be returned if a permit application is terminated, withdrawn, returned, or denied unless the funds, or some portion thereof, have not been used by the department or health district as of the date of the termination, withdrawal, return, or denial.

(12) A permit issued pursuant to this section may be transferred only to a new owner or operator of the permitted MSWLF. The new owner or operator shall submit to the director in writing, a request for permit transfer. The request shall include a statement that the new owner or operator will comply with all terms and conditions of the permit. Upon transfer of the permit, the new owner or operator shall be responsible for compliance with all terms and conditions of the permit, and shall be subject to enforcement of such terms and conditions.

(13) The following MSWLF units are not eligible for a permit issued pursuant to this section:

(a) MSWLF units operating under an exemption set forth in section 39-7409(2)(c), Idaho Code.

(b) MSWLF units operating under an exemption set forth in 40 CFR 258.1(f).

(c) MSWLF units that dispose of twenty (20) tons of solid waste per day or less, based on an annual average, are not eligible for a variance from 40 CFR 258.60(b)(1), except in accordance with 40 CFR 258.60(b)(3).

(d) MSWLF units that have exceeded ground water protection standards at statistically significant levels as specified in section 39-7410(4)(a), Idaho Code, from any waste unit on site and have not implemented a remedy in accordance with section 39-7414, Idaho Code, prior to RDD permit application submittal.

(e) MSWLF units that have landfill gas concentration exceedances, as specified in section 39-7412(4), Idaho Code, from any waste unit on site and have not implemented a remedy in accordance with section 39-7412(4), Idaho Code, prior to RDD permit application submittal.

(14) Owners or operators of MSWLF units circulating leachate or gas condensate derived from the MSWLF unit in compliance with section 39-7412(8), Idaho Code, and 40 CFR 258.28, and not implementing or otherwise utilizing an exemption under this section, are not required to comply with the requirements of this section.

(15) An applicant or permittee may appeal any final decision made by the director under this section by filing a request for hearing in accordance with rules promulgated by the department governing contested cases, or in the absence of such rules, in accordance with the procedures in chapter 52, title 67, Idaho Code.

[39-7421, added 2010, ch. 146, sec. 1, p. 309.]