

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION

CHAPTER 39
INJECTION WELLS

42-3901. GROUND WATER AS PUBLIC RESOURCE -- PROTECTION. The legislature of the state of Idaho hereby declares the ground water of this state to be a public resource which must be protected against unreasonable contamination or deterioration of quality to preserve such waters for diversion to beneficial uses; that in order to protect such waters against contamination or deterioration in quality it is necessary that the construction and use of injection wells be controlled as provided in this chapter.

[42-3901, added 1971, ch. 301, sec. 1, p. 1235; am. 1984, ch. 155, sec. 1, p. 372.]

42-3902. DEFINITIONS. Whenever used in this chapter:

(1) "Aquifer" means any geologic formation that will yield water to a well in sufficient quantities to make production of water from the formation feasible for beneficial use, except when the water in such formation results solely from injection through a deep or shallow injection well.

(2) "Class II injection well" means a deep injection well used to inject fluids:

(a) Which are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production and may be commingled with waste waters from gas plants, dehydration stations, or compressor stations which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection;

(b) For enhanced recovery of oil or natural gas; or

(c) For storage of hydrocarbons which are liquid at standard temperature and pressure.

(3) "Deep injection well" means an injection well which is more than eighteen (18) feet in vertical depth below land surface.

(4) "Director" means the director of the department of water resources.

(5) "Drinking water source" means an aquifer which contains water having less than ten thousand (10,000) mg/l total dissolved solids and has not been exempted from this designation by the director of the department of water resources.

(6) "Fluid" means any material or substance which flows or moves whether in a semisolid, liquid, sludge, gaseous or any other form or state.

(7) "Formation" means a body of consolidated or unconsolidated rock characterized by a degree of lithologic homogeneity which is mappable at the earth's surface or traceable in the subsurface.

(8) "Hazardous waste" means any fluid or combination of fluids, excluding radioactive wastes, which because of quantity, concentration or characteristics (physical, chemical or biological) may:

(a) Cause or significantly contribute to an increase in deaths or an increase in serious, irreversible or incapacitating reversible illness; or

(b) Pose a substantial threat to human health or to the environment if improperly treated, stored, disposed of, or managed. Such wastes include, but are not limited to, materials which are toxic, corro-

sive, ignitable, or reactive, or materials which may have mutagenic, teratogenic, or carcinogenic properties, but do not include solid or dissolved material in domestic sewage or solid or dissolved material in irrigation return flows.

(9) "Injection" means the subsurface emplacement of fluids through an injection well, but excludes the following:

(a) The underground injection of natural gas for purposes of storage; and

(b) The underground injection of fluids or propping agents, other than diesel fuels, pursuant to hydraulic fracturing operations related to oil, gas or geothermal production activities.

(10) "Injection well" means any feature that is operated to allow injection which also meets at least one (1) of the following criteria:

(a) A bored, drilled or driven shaft whose depth is greater than the largest surface dimension;

(b) A dug hole whose depth is greater than the largest surface dimension;

(c) An improved sinkhole; or

(d) A subsurface fluid distribution system.

Provided however, that "injection well" does not mean or include any well used for oil, gas or geothermal production activities, other than one into which diesel fuels are injected pursuant to hydraulic fracturing operations.

(11) "Irrigation waste water" means excess surface water from agricultural fields generated during any agricultural operation, including runoff of irrigation tailwater, as well as natural drainage resulting from precipitation, snowmelt and floodwaters.

(12) "Licensed driller" means any person holding a valid license to drill water wells in Idaho as provided and defined in section 42-238, Idaho Code.

(13) "Operate" means to allow fluids to enter an injection well by action or by inaction of the operator.

(14) "Operator" means any individual, group of individuals, partnership, company, corporation, municipality, county, state agency, taxing district or federal agency who operates or proposes to operate any injection well.

(15) "Owner" means any individual, group of individuals, partnership, company, corporation, municipality, county, state agency, taxing district, or federal agency owning land on which any injection well exists or is proposed to be constructed.

(16) "Radioactive material" means any material, solid, liquid or gas which emits radiation spontaneously.

(17) "Radioactive waste" means any fluid which contains radioactive material in concentrations which exceed those established for discharges to water by 10 CFR 20.

(18) "Sanitary waste" means any fluid generated through residential (domestic) activities, such as food preparation, cleaning and personal hygiene. The term does not include industrial, municipal, commercial or other nonresidential process fluids.

(19) "Shallow injection well" means an injection well which is less than or equal to eighteen (18) feet in vertical depth below land surface.

(20) "Surface runoff water" means runoff water from the natural ground surface and cropland. Runoff from urbanized areas, such as streets, park-

ing lots, airports, and runoff from animal feedlots, agricultural processing facilities and similar facilities are not included within the scope of this term.

[42-3902, added 1971, ch. 301, sec. 2, p. 1235; am. 1984, ch. 155, sec. 2, p. 372; am. 2001, ch. 103, sec. 84, p. 325; am. 2007, ch. 83, sec. 9, p. 232; am. 2011, ch. 110, sec. 2, p. 287; am. 2012, ch. 111, sec. 5, p. 306; am. 2013, ch. 44, sec. 1, p. 91; am. 2014, ch. 107, sec. 1, p. 313.]

42-3902A. PROHIBITION OF INJECTION OF HAZARDOUS WASTES AND OF RADIOACTIVE WASTES. Construction of an injection well to be used for injection of hazardous wastes or of radioactive wastes into or above a drinking water source is prohibited. Injection of hazardous wastes or of radioactive wastes through an existing injection well into or above a drinking water source is prohibited. Any such injection shall subject any person responsible for said activity to the sanctions and penalties of this chapter in addition to all other applicable sanctions and penalties provided by statute or the common law.

[42-3902A, added 1984, ch. 155, sec. 3, p. 374.]

42-3903. DEEP INJECTION WELLS -- CONSTRUCTION -- MODIFICATION -- USE -- PERMIT REQUIRED. No new deep injection well shall be constructed after the effective date of this act unless a permit therefor has been issued by the director of the department of water resources. No deep injection well existing on the effective date of this act shall be modified after the effective date of this act unless a permit therefor has been issued by the director. No deep injection well existing on the effective date of this act shall continue to be used and maintained after January 1, 1974, unless a permit therefor has been issued by the director.

[42-3903, added 1971, ch. 301, sec. 3, p. 1235; am. 1974, ch. 20, sec. 38, p. 533; am. 2011, ch. 110, sec. 3, p. 288.]

42-3903A. SHALLOW INJECTION WELLS -- AUTHORIZATION FOR CONSTRUCTION AND USE. Construction and use of shallow injection wells shall be authorized by rules and regulations adopted by the water resource board. Shallow injection wells used for the disposal of nonhazardous and nonradioactive sanitary wastes generated in, on, or in conjunction with a single family noncommercial dwelling are exempt from the authorization requirements of this chapter, but shall be subject to the applicable requirements of the Idaho environmental protection and health act of 1972, sections 39-101, et seq., Idaho Code.

[42-3903A, added 1984, ch. 155, sec. 4, p. 374.]

42-3904. APPLICATION FOR PERMIT -- OWNER -- OPERATOR RESPONSIBLE -- NOTICE OF CONSTRUCTION FORM. (1) The owner or operator shall make application to the director of the department of water resources for a permit as provided in this chapter. When a facility is owned by one (1) person but operated by another, it shall be the operator's duty to obtain a permit. Such application shall be upon forms furnished by the director which shall require information concerning the location and description of the injection well, the quantity, quality, and nature of the material being or proposed to be injected, the description of the underground formation and aquifer into which the material is proposed to be or is being injected, the availability of alternative sources of disposal, and such other information as will en-

able the director to determine the effect of injection upon the quality of the ground water, the effect upon the beneficial uses of said ground water, the effect upon the public health and the effect upon public benefits derived therefrom, if any. Such application shall be submitted complete with fees as provided in this chapter. Mine shafts used for the disposal of wastes resulting from the mining and concentration process shall be exempt from the permit requirements of this chapter until an inventory and assessment of the contamination potential posed by such operation is completed.

(2) Owners of new shallow injection wells drilled after July 1, 1997, shall submit a notice of construction form to the department of water resources no later than thirty (30) days prior to commencement of construction for each new well. The notice of construction form shall be submitted with the fee as provided in this chapter on a form provided by the department of water resources.

[42-3904, added 1971, ch. 301, sec. 4, p. 1235; am. 1974, ch. 20, sec. 39, p. 533; am. 1984, ch. 155, sec. 5, p. 374; am. 1997, ch. 208, sec. 1, p. 624; am. 2011, ch. 110, sec. 4, p. 289.]

42-3905. FEES -- TRANSMITTED TO STATE TREASURER. (1) Fees provided for in this section shall accompany all applications and notice of construction forms. No such application or notice of construction form shall be accepted unless accompanied by a filing fee as provided in this section. A separate application shall be filed for each deep injection well and each shallow injection well for which a permit is required by the rules adopted by the water resource board. The filing fee for each deep injection well requiring a permit shall be two thousand five hundred dollars (\$2,500) for a class II injection well and one hundred dollars (\$100) for all other deep injection wells, payable to the department of water resources.

(2) The notice of construction form for each new shallow injection well shall be accompanied by a fee of seventy-five dollars (\$75.00) payable to the department of water resources.

(3) All fees received under the provisions of this chapter are deemed to be nonrefundable and shall be transmitted to the state treasurer for deposit in the water administration fund as established under the provisions of section 42-238a, Idaho Code, except that fees submitted with applications that do not require a permit shall be returned to the applicant. Fees collected may be used by the director of the department of water resources to carry out the provisions of this chapter.

[42-3905, added 1971, ch. 301, sec. 5, p. 1235; am. 1972, ch. 180, sec. 1, p. 460; am. 1974, ch. 20, sec. 40, p. 533; am. 1984, ch. 155, sec. 6, p. 375; am. 1997, ch. 208, sec. 2, p. 625; am. 2011, ch. 110, sec. 5, p. 289; am. 2013, ch. 44, sec. 2, p. 93.]

42-3907. DEPARTMENT OF WATER RESOURCES -- PUBLIC NOTICE AND INVESTIGATION. (1) Upon receipt of an application or other notice to construct, maintain, modify or abandon an injection well, the director shall give public notice as required by the rules and regulations promulgated under authority of this chapter.

(2) The director shall examine each application and shall make an investigation to determine what effect the use of the proposed or existing injection well will have or is having upon the rights of others to use water for beneficial purposes. For purposes of such investigation, the director may conduct a fact finding or investigative hearing. He may apply to the

district court of the county in which the well is located for subpoenas requiring the appearance of witnesses and production of books, records, and papers; or he may administer oaths, and take testimony at any place and time. Employees and agents of the department of water resources may make reasonable entry upon any lands in the state for purposes of making investigations and surveys, or for other purposes necessary to carry out the intent of this chapter.

[42-3907, added 1971, ch. 301, sec. 7, p. 1235; am. 1974, ch. 20, sec. 42, p. 533; am. 1984, ch. 155, sec. 8, p. 375.]

42-3908. PERMIT APPROVING CONSTRUCTION AND USE -- CONDITIONS -- REJECTION OF APPLICATION. If the director of the department of water resources determines the use of the proposed or existing injection well will not affect the rights of others to use water for beneficial purposes shall issue a permit approving the construction, modification or continued operation of such well. Such permit shall contain conditions, if any, determined to be necessary to protect the public interest in the ground water resource including, but not limited to, the method and manner of operation of the injection well, the period during which the injection well may be operated, a date when such permit shall expire, and periodic reports to the department of water resources of the quality and quantity of the fluids injected. No deep injection well or shallow injection well, as may be required by rules and regulations adopted under this chapter, shall be used unless a valid permit is in effect in accordance with this chapter.

The director shall require, as a condition of every class II injection well permit, that every person who engages in the construction, modification or operation of a well provides evidence of good and sufficient security in the form of a bond, letter of credit or other surety acceptable to the director that ensures that the applicant performs the duties required pursuant to this chapter and properly decommission any well covered by such permit. Good and sufficient security for each injection well shall be in the amount of ten thousand dollars (\$10,000) plus one dollar (\$1.00) per foot of depth. The security shall be conditioned upon the performance of the owner's or operator's duty to comply with the rules of the water resource board with respect to the construction, modification, operation, plugging and decommissioning of each well. The security shall remain in full force and effect until the plugging and decommissioning of the well is approved by the director or the security is released by the director. Well decommissioning shall include reclamation of the well site so that the site is left in a stable, noneroding condition with no impact to any ground water or surface water sources of the state. The director may require additional security of an owner or operator given sufficient reason, such as noncompliance, unusual conditions or other circumstances that suggest a particular well has potential risk or liability in excess of that normally expected.

If the director of the department of water resources determines the use of the proposed or existing injection well will interfere or is interfering with the right of the public to withdraw water for beneficial uses, and the director finds there are no overriding needs existing to justify the use of the injection well, the director may reject the application and forward notice of such rejection to the owner or operator by certified mail.

[42-3908, added 1971, ch. 301, sec. 8, p. 1235; am. 1974, ch. 20, sec. 43, p. 533; am. 1984, ch. 155, sec. 9, p. 376; am. 2011, ch. 110, sec. 6, p. 290; am. 2013, ch. 43, sec. 1, p. 90.]

42-3909. DISAPPROVAL OF APPLICATION -- OWNER OR OPERATOR ENTITLED TO HEARING -- PROCEDURE -- JUDICIAL REVIEW. Any owner or operator aggrieved by the disapproval of an application or by the conditions imposed in a permit shall upon request therefor in writing within thirty (30) days after receipt of notice of such disapproval or conditional approval, be afforded an opportunity for a hearing before the water resources board, such hearing to be conducted in accordance with chapter 52, title 67, Idaho Code, at a place convenient to the owner or operator. Such hearing shall be held for the purpose of determining whether the permit should be issued or whether the conditions imposed in a permit are reasonable, or whether a change in circumstances warrants a change in the conditions imposed in a valid permit. For purposes of such hearing the water resource board shall have power to administer oaths, examine witnesses, and issue in the name of the board subpoenas requiring testimony of witnesses and the production of evidence relevant to any matter in the hearing. A certified transcript of the proceedings and the evidence received at such hearing shall be maintained by the board. The board shall affirm, modify or reject the director's decision, and make its decision in the form of an order to the director. Judicial review of a final determination by the board may be secured by the owner or operator by filing a petition for review as prescribed by chapter 52, title 67, Idaho Code, in the district court of the county wherein the injection well is situated. The petition for review shall be served upon the chairman of the water resource board and upon the attorney general as provided by the Idaho rules of civil procedure.

[42-3909, added 1971, ch. 301, sec. 9, p. 1235; am. 1974, ch. 20, sec. 44, p. 533; am. 1984, ch. 155, sec. 10, p. 376.]

42-3910. CANCELLATION OF PERMIT -- NOTICE -- HEARING -- REVIEW. When the director of the department of water resources has reason to believe the operation and use of an injection well, for which a permit has been issued in accordance with this chapter, is interfering with the right of the public to withdraw water for beneficial uses, or is causing unreasonable contamination or deterioration of the quality of the ground water below the adopted water quality standards of the board of environmental quality, he may cancel such permit. Prior to the cancellation of such permit there shall be a hearing before the water resource board for the purpose of determining whether or not the permit should be cancelled. At such hearing the director of the department of water resources shall be the complaining party. For purposes of such hearing, the board shall have power to administer oaths, examine witnesses and issue subpoenas requiring testimony of witnesses and production of evidence relevant to any matter in the hearing. The hearing shall be conducted in accordance with chapter 52, title 67, Idaho Code, and the board shall provide the owner or operator whose permit is proposed to be cancelled with reasonable notice and the opportunity to be heard in accordance with chapter 52, title 67, Idaho Code. A certified transcript of the proceedings and the evidence received at such hearing shall be maintained by the board. The board shall affirm, modify or reject the director's decision, and make its decision in the form of an order to the director. Review of a final determination by the board may be secured by the owner or operator by filing a petition for review as prescribed by chapter 52, title 67, Idaho Code, in the district court of the county wherein the injection well is situated. The petition for review shall be served upon the chairman of the water resource

board and upon the attorney general as provided by the Idaho rules of civil procedure.

[42-3910, added 1971, ch. 301, sec. 10, p. 1235; am. 1974, ch. 20, sec. 45, p. 533; am. 1984, ch. 155, sec. 11, p. 377; am. 2001, ch. 103, sec. 85, p. 327.]

42-3911. FAILURE TO OBTAIN REQUIRED PERMIT OR SUBMIT REQUIRED INFORMATION -- PENALTY. Any owner or operator who causes to be constructed or consents either expressly or impliedly to the construction of a new deep injection well without having first obtained a permit therefor from the director of the department of water resources as provided in this chapter shall be guilty of a misdemeanor. Any owner or operator who causes an existing deep injection well to be modified or consents either expressly or impliedly to the modification of an existing deep injection well without having first obtained a permit therefor from the director of the department of water resources as provided in this chapter shall be guilty of a misdemeanor. From and after January 1, 1974, any owner or operator who continues to operate and maintain or consents either expressly or impliedly to the continued operation and maintenance of an existing deep injection well without having first obtained a permit therefor from the director of the department of water resources as provided in this chapter shall be guilty of a misdemeanor; provided, that no misdemeanor shall occur where an owner or operator applied for a permit before January 1, 1974, and the director of the department of water resources has not approved or rejected said application. Any owner or operator of a proposed or existing injection well who violates the rules and regulations of the water resource board shall be guilty of a misdemeanor. Each and every day that such activity is carried on in violation of this section shall constitute a separate and distinct offense.

[42-3911, added 1971, ch. 301, sec. 11, p. 1235; am. 1974, ch. 20, sec. 46, p. 533; am. 1984, ch. 155, sec. 12, p. 378; am. 2011, ch. 110, sec. 7, p. 290.]

42-3912. DRILLERS -- MUST BE LICENSED -- APPROVED PERMITS -- CERTIFIED COPIES. It shall be unlawful for any person not a licensed driller to construct a new deep injection well or modify an existing deep injection well, except that a driller's license is not required for the construction of a driven mine shaft or dug hole for the purposes of this chapter. All licensed drillers shall obtain a certified copy of the approved permit from the director of the department of water resources prior to construction of any new deep injection well or prior to the modification of any existing deep injection well. Failure by a licensed driller to comply with this section shall constitute cause for revocation of a well driller's license in accordance with section 42-238, Idaho Code.

[42-3912, added 1971, ch. 301, sec. 12, p. 1235; am. 1974, ch. 20, sec. 47, p. 533; am. 1984, ch. 155, sec. 13, p. 378; am. 2011, ch. 110, sec. 8, p. 290.]

42-3913. MINIMUM STANDARDS -- RULES AND REGULATIONS -- ADOPTION. The water resource board shall adopt minimum standards for the construction or abandonment of deep injection wells. Such standards shall require each deep injection well to be so constructed as to protect the ground water of this state from waste and unreasonable contamination. Each licensed well driller or operator will be furnished with a copy of the adopted standards, and will

be required to construct each deep injection well drilled after the effective date of said rules and regulations in compliance with the determined standards. Failure by a licensed driller to comply with such standards shall constitute cause for revocation of the well driller's license in accordance with section 42-238, Idaho Code.

The water resource board shall also adopt minimum standards for the construction and abandonment of shallow injection wells. Any person who constructs or abandons a shallow injection well without complying with such standards shall be guilty of a misdemeanor.

[42-3913, added 1971, ch. 301, sec. 13, p. 1235; am. 1974, ch. 20, sec. 48, p. 533; am. 1984, ch. 155, sec. 14, p. 378; am. 2011, ch. 110, sec. 9, p. 291.]

42-3914. BOARD TO ESTABLISH STANDARDS. The provisions of this chapter shall not prevent the present or future use of any existing or proposed injection well which is used exclusively for disposal of irrigation waste water or of surface runoff water where such disposal does not adversely affect drinking water sources, and state or local government entities involved in highway and street construction and maintenance shall be exempt from fees and permit applications for shallow injection wells. The water resource board shall establish criteria and standards for the injection of fluids under the provisions of this chapter which shall not become valid and enforceable until adopted under provisions of the administrative procedures act, chapter 52, title 67, Idaho Code.

[42-3914, added 1971, ch. 301, sec. 14, p. 1235; am. 1974, ch. 20, sec. 49, p. 577; am. 1984, ch. 155, sec. 15, p. 379.]

42-3915. ADOPTION OF REGULATIONS. The water resource board shall adopt all regulations authorized by the provisions of chapter 39, title 42, Idaho Code, in conformance with the provisions of chapter 52, title 67, Idaho Code, provided that the board shall not adopt any regulation regarding the inventory of shallow injection wells that is more stringent than federal law or any regulations promulgated pursuant thereto.

[42-3915, added 1984, ch. 155, sec. 16, p. 379.]

42-3916. ENFORCEMENT PROCEDURE -- INJUNCTIVE RELIEF. When the director of the department of water resources determines that any person is in substantial violation of any provision of this chapter or any rule, permit, certificate, condition of approval or order issued or promulgated pursuant to this chapter, the director may commence an administrative enforcement action by issuing a written notice of violation in accordance with the provisions of section 42-1701B, Idaho Code. The director shall have the further authority to seek a preliminary or permanent injunction, or both, or a temporary restraining order restraining any person from violating or attempting to violate the provisions of this chapter, of the rules adopted thereunder, or of the permits issued by the director and mandating any person to take action appropriate under the circumstances to correct any violation. In any such action the director need not show irreparable injury for the issuance of a preliminary or permanent injunction, or both, or a temporary restraining order.

[42-3916, added 1984, ch. 155, sec. 17, p. 380; am. 1998, ch. 173, sec. 12, p. 611.]

42-3917. CIVIL PENALTIES -- INJECTION OF HAZARDOUS AND RADIOACTIVE WASTES. Any person who constructs, operates, maintains, converts, plugs, abandons, or conducts any other activity in a manner that results or may result in the unauthorized injection of a hazardous waste or of a radioactive waste through an injection well shall be in violation of section 42-3902A, Idaho Code, and subject to a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each day in which such action occurs. The director shall have the authority to file an action in the appropriate district court to impose, assess and recover said civil penalties.

[42-3917, added 1984, ch. 155, sec. 18, p. 380.]

42-3918. CEASE AND DESIST ORDERS -- INJECTION OF HAZARDOUS AND RADIOACTIVE WASTES. Whenever the director finds that any person has constructed, operated, maintained, converted, plugged, abandoned or conducted any other activity in a manner that results in the unauthorized injection of a hazardous waste or of a radioactive waste through an injection well or whenever the director finds that any person proposes to do or to allow any such acts, then the director may issue a cease and desist order. The cease and desist order shall become effective and final upon issuance thereof. The director shall serve forthwith in accordance with the Idaho rules of civil procedure a certified copy of any such order on that person. That person shall have the right to a hearing in accordance with section 42-1701A, Idaho Code.

[42-3918, added 1984, ch. 155, sec. 19, p. 380.]

42-3919. CRIMINAL PENALTY -- WILLFUL VIOLATION -- VIOLATION OF CEASE AND DESIST ORDER. Any person who willfully constructs, operates, maintains, converts, plugs, abandons, or conducts any other activity in a manner that results or may result in the injection of a hazardous waste or of a radioactive waste through an injection well in violation of section 42-3902A, Idaho Code, or any person who willfully violates any cease and desist order after the same has been served on that person is guilty of a misdemeanor and:

- (1) May be sentenced to jail for a period not to exceed six (6) months;
- (2) May be fined in an amount not to exceed five thousand dollars (\$5,000) for each offense; and
- (3) Each day of violation shall constitute a separate offense.

[42-3919, added 1984, ch. 155, sec. 20, p. 380.]