

IN THE SENATE

SENATE BILL NO. 1238

BY RESOURCES AND ENVIRONMENT COMMITTEE

AN ACT

RELATING TO PUBLIC RECORDS; AMENDING SECTION 74-114, IDAHO CODE, TO AUTHORIZE INSPECTION AND COPYING OF CERTAIN RECORDS RELATING TO WATER QUALITY AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 74-114, Idaho Code, be, and the same is hereby amended to read as follows:

74-114. ACCESS TO AIR QUALITY, WATER QUALITY AND HAZARDOUS WASTE RECORDS -- PROTECTION OF TRADE SECRETS. (1) To the extent required by the federal clean air act, the federal clean water act and the resource conservation and recovery act for state primacy over any delegated or authorized programs, even if the record is otherwise exempt from disclosure under this chapter, any person may inspect and copy:

(a) Air pollution emission data;

(b) The content of any title V operating permit;

(c) The name and address of any Idaho pollutant discharge elimination system (IPDES) applicant or permittee;

(d) The content of any IPDES permit;

(e) IPDES permit applications, and information required to be submitted by IPDES application forms, whether the information is submitted on the application forms themselves or in any attachments used to supply information required by the application forms;

(f) Effluent data or a standard or limitation, as defined in 40 CFR 2.302;

(g) The name and address of any applicant or permittee for a hazardous waste treatment, storage, or disposal facility permit pursuant to chapter 44, title 39, Idaho Code; and

(h) Any other record required to be provided to or obtained by the department of environmental quality pursuant to the federal clean air act, the federal clean water act and the resource conservation and recovery act, and the implementing state statutes, federal regulations and state rules, unless the record is a trade secret.

(2) For purposes of this section, a record, or a portion of the record, is a "trade secret" if the information contained in the record is a trade secret within the meaning of the Idaho trade secrets act, sections 48-801, et seq., Idaho Code, including commercial or financial information which, if disclosed, could cause substantial competitive harm to the person from whom the record was obtained.

(3) Any record, or portion of a record, provided to or obtained by the department of environmental quality and identified by the person providing the record as a trade secret shall not be disclosed to the public and shall be kept confidential according to the procedures established in this section.

1 (4) Nothing in this section shall be construed as limiting the disclo-
2 sure of a trade secret by the department of environmental quality:

3 (a) To any officer, employee, or authorized representative of the state
4 or the United States, under a continuing claim of confidentiality, as
5 necessary to carry out the provisions of state or federal law, or when
6 relevant to any proceeding thereunder;

7 (b) As determined necessary by the director of the department of en-
8 vironmental quality (under a continuing confidentiality claim) to pro-
9 tect the public health and safety from imminent and substantial endan-
10 germent;

11 (c) As required by state or federal law, including section 74-115(3),
12 Idaho Code, under a continuing claim of confidentiality and subsection
13 (1) of this section; or

14 (d) With the consent of the person from whom the record is obtained.

15 (5) It shall be the responsibility of any person providing a record to
16 the department of environmental quality to give notice of the existence of a
17 trade secret on each page or other portion of information at the time of sub-
18 mittal, and such person shall have the burden of demonstrating that the in-
19 formation is a trade secret.

20 (6) Notwithstanding the time frames set forth in section 74-103(1),
21 Idaho Code, when a request is made to the department of environmental quality
22 pursuant to the provisions of this chapter for the disclosure of information
23 for which a trade secret claim has been made, and the information has not
24 been demonstrated to be a trade secret to the satisfaction of the director
25 of the department of environmental quality, within three (3) working days of
26 receipt of the request for the disclosure of the information, the department
27 of environmental quality shall provide a written request for substantiation
28 to the person making the confidentiality claim. A response shall be submit-
29 ted to the department of environmental quality by the person claiming the
30 trade secret protection within ten (10) working days after receipt of the
31 request for substantiation, or the information subject to the claim shall be
32 disclosed without further notice. Upon receipt of a timely response to the
33 request for substantiation, the director of the department of environmental
34 quality shall determine whether the information is a trade secret subject to
35 protection.

36 (a) If it is determined that the information, or any portion of the
37 information, is a trade secret, within three (3) working days after re-
38 ceipt of the response, the director of the department of environmental
39 quality shall notify the person requesting the information that the
40 request is denied pursuant to subsections 74-103(3) and (4) of section
41 74-103, Idaho Code.

42 (b) If it is determined that the information, or any portion of the
43 information, is not a trade secret and is, therefore, subject to dis-
44 closure, within three (3) working days after receipt of the response,
45 the director of the department of environmental quality shall inform
46 the person making the confidentiality claim of the determination. The
47 decision shall be a final agency action directly appealable, de novo, to
48 the district court of the county where the records or some part thereof
49 are located. An appeal contesting the decision of the director of the
50 department of environmental quality to release information claimed to

1 be a trade secret shall be filed within ten (10) working days from the
2 date of receipt of the written notice of decision. The information
3 claimed to be a trade secret shall not be disclosed until the period
4 for appeal has expired with no appeal being taken, or a court order has
5 been issued finding that the information is not a trade secret and all
6 appeals of that order have been exhausted.

7 (7) In any appeal taken pursuant to this section, the court may award
8 reasonable costs and attorney's fees to the prevailing party if it finds the
9 claim of confidentiality or the decision of the director of the department of
10 environmental quality to provide records was frivolously pursued.

11 (8) The department of environmental quality shall adopt rules which in-
12 clude:

13 (a) Appropriate measures to safeguard and protect against improper
14 disclosure of trade secrets, including procedures to train all employ-
15 ees on the proper handling of trade secrets; and

16 (b) Any other provisions necessary to carry out this section.

17 (9) As it relates to the department of environmental quality, or to
18 agents, contractors, or other representatives of the department, the immu-
19 nity created in section 74-118, Idaho Code, shall apply only when disclosure
20 of a trade secret is made consistent with this section.