

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 599

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO SOLID WASTE LANDFILLS; AMENDING CHAPTER 74, TITLE 39, IDAHO
2 CODE, BY THE ADDITION OF A NEW SECTION 39-7421, IDAHO CODE, TO PROVIDE
3 FOR RESEARCH, DEVELOPMENT AND DEMONSTRATION PERMITS AND TO PROVIDE
4 PROCEDURES.
5

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

7 SECTION 1. That Chapter 74, Title 39, Idaho Code, be, and the same is
8 hereby amended by the addition thereto of a NEW SECTION, to be known and
9 designated as Section 39-7421, Idaho Code, and to read as follows:

10 39-7421. RESEARCH, DEVELOPMENT AND DEMONSTRATION PERMITS. (1) The
11 provisions of 42 U.S.C. 6945(c) (1) (B) and 40 CFR 258 allow the administrator
12 of the United States environmental protection agency to approve state
13 research, development and demonstration permit programs.

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

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

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

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

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

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

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

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

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

40 (c) The MSWLF unit owner or operator shall install and operate a
41 landfill gas collection and control system in accordance with emission
42 control requirements as specified in 40 CFR part 60, and when collected

1 in economically feasible volumes, landfill gas shall be used for energy
2 generation.

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

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

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

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

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

26 (d) Require the owner or operator of a MSWLF unit permitted under this
27 section to submit an annual report to the director showing whether
28 and to what extent the site is progressing in attaining project goals.
29 The report shall also include a summary of all monitoring and testing
30 results, as well as any other operating information specified by the
31 director in the permit. Annual reports shall be submitted to the
32 director within three (3) months after the anniversary date of the
33 approved permit or permit renewal; and

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

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

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

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

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

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

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

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

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

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

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

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

32 (c) Reasonable costs associated with the department's and health
33 district's oversight of permitted RDD units, including inspections and
34 the review of annual reports, monitoring, and testing results required
35 pursuant to this section or required by permit, and the processing of
36 permit amendments and terminations; and

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

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

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

1 costs the department and health district may incur associated with the
2 review and oversight of the permit renewal.

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

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

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

24 (e) Once the department and the health district concur with an
25 applicant's estimation of reimbursable review and oversight costs,
26 and the department provides the applicant notice thereof, a permit
27 applicant or permit renewal applicant may submit to the department the
28 reimbursement funds in their entirety or an installment deposit of two
29 thousand five hundred dollars (\$2,500). Should funding be required
30 for costs incurred in excess of the initial two thousand five hundred
31 dollar (\$2,500) deposit, the department shall notify the applicant of
32 required successive deposits in the amount of two thousand five hundred
33 dollars (\$2,500). The department shall pass along funds collected on
34 behalf of the health district for reimbursable review and oversight
35 costs incurred by such district within sixty (60) days of receipt of
36 such funds from the applicant, or within sixty (60) days of receipt of
37 a certified request for such funds from the health district, whichever
38 is later. Any unused portion of the reimbursement funds, deposit, or
39 successive deposit shall be returned to the applicant within sixty (60)
40 days of the director's final decision to issue or deny a permit or permit
41 renewal pursuant to this section. If the applicant fails to submit a
42 successive deposit, the department shall suspend review of the permit
43 application or renewal application, and the director shall be relieved
44 of any applicable statutory or regulatory permit application or renewal
45 application review deadlines during the review suspension.

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

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

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

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

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

20 (a) MSWLF units operating under an exemption set forth in section
21 39-7409(2)(c), Idaho Code.

22 (b) MSWLF units operating under an exemption set forth in 40 CFR
23 258.1(f).

24 (c) MSWLF units that dispose of twenty (20) tons of solid waste per day
25 or less, based on an annual average, are not eligible for a variance from
26 40 CFR 258.60(b)(1), except in accordance with 40 CFR 258.60(b)(3).

27 (d) MSWLF units that have exceeded ground water protection standards
28 at statistically significant levels as specified in section
29 39-7410(4)(a), Idaho Code, from any waste unit on site and have not
30 implemented a remedy in accordance with section 39-7414, Idaho Code,
31 prior to RDD permit application submittal.

32 (e) MSWLF units that have landfill gas concentration exceedances,
33 as specified in section 39-7412(4), Idaho Code, from any waste unit
34 on site and have not implemented a remedy in accordance with section
35 39-7412(4), Idaho Code, prior to RDD permit application submittal.

36 (14) Owners or operators of MSWLF units circulating leachate or
37 gas condensate derived from the MSWLF unit in compliance with section
38 39-7412(8), Idaho Code, and 40 CFR 258.28, and not implementing or otherwise
39 utilizing an exemption under this section, are not required to comply with
40 the requirements of this section.

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