

# **Bond Case Briefs**

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## **COMPOST - IDAHO**

### **Department of Environmental Quality v. Gibson**

**Supreme Court of Idaho, Boise, December 2019 Term - March 11, 2020 - P.3d - 2020 WL 1164516**

Department of Environmental Quality (DEQ) brought civil enforcement action against operator of composting facility under Environmental Protection and Health Act.

After bench trial, the District Court assessed civil penalty and issued injunction. Operator appealed.

The Supreme Court held that:

- Rule governing motions to amend or alter judgment was proper procedural mechanism for operator's request that trial court "reconsider" its findings;
- Operator's argument of federal preemption was an affirmative defense, and thus failure to timely assert argument resulted in its waiver;
- Facility was a "non-municipal solid waste facility" rather than a "municipal solid waste landfill," and therefore facility was subject to regulation under Department of Environmental Quality's solid waste management rules rather than under state Solid Waste Facilities Act;
- Statute setting out time limit for civil or administrative proceedings to recover for violation of Environmental Protection and Health Act is not a statute of repose;
- Investigation of facility by employee of Department did not constitute a search that could be subject to Fourth Amendment;
- Grass clippings and leaves left at facility were "solid waste" subject to regulation under Environmental Protection and Health Act; and
- As a matter of first impression, statute providing for award of attorney fees to prevailing party in proceedings involving state agencies or political subdivisions allows court to award fees on a claim-by-claim basis.