



Surface Mining Act Overview

Surface Mining is the extraction of minerals or mineral materials from the ground by utilizing surface mining or strip mining methods. In Idaho, minerals mined by this method include decorative stone, sand and gravel, phosphate, molybdenum, gold, silver and others. The Surface Mining Act, passed in 1971, was designed to require reclamation of affected lands and return them to a productive condition. A few changes have been made over the years, but the basic components of the 1971 Act still stand:

- Surface mining requires an approved reclamation plan;
- Each approved reclamation plan must have a performance bond;
- Exploration using motorized earth moving equipment requires a notice;
- Water quality must be maintained and affected lands and disturbed watercourses must be reclaimed;
- Penalties for violation of the Act.

Any person who conducts surface mining of minerals for ultimate or immediate sale, in either the natural or processed state, must first have an approved reclamation plan. Public or governmental agencies mining sand and gravel in excess of two acres for purposes of maintenance, repair or construction of a public highway must file a reclamation plan with the Department, however, no bond is required.

The Department of Lands, as the lead agency for implementing the antidegradation policy for surface mining, may solicit comments from the Departments of Fish and Game, Water Resources and Environmental Quality. A site review with these agencies will be conducted prior to plan approval if necessary. Review takes from thirty to sixty days. A format for submission of a plan is available from the Department. Approval is by the Department of Lands. Approved plans are good for the life of the operation and are transferable. There are currently more than 1,000 approved plans in Idaho, most of which are active. The Act applies to all lands in the State, including private, state and federal (US Forest Service and Bureau of Land Management). On federal lands an operating plan may be required by the surface management agency, usually USFS or BLM. Under authority of Memorandums of Understanding with the USFS and BLM, one plan should be developed for the state and the federal agency involved. On national forest system lands, the USFS assumes the role of a lead agency. When an operation is larger than five acres on Bureau of Land Management land, the BLM assumes the role of lead agency.

Bonding

A performance bond is required as a condition of reclamation plan approval to assure the completion of reclamation. A bond can be either a surety bond, or an annual payment to the Reclamation Fund, Cash, a Certificate of Deposit or a Bank Letter of Credit. The amount of bond is the amount necessary to reclaim the lands, usually not to exceed \$2,500 per affected acre. A bond in excess of \$2,500 per affected acre may be required under certain conditions. The Department of Lands and the operator agree at the time of plan approval on a bond amount for lands to be affected during the next 12-month period. If the operator defaults on the reclamation performance, a hearing may be required to recover the bond. The operator is given an opportunity to do the reclamation or contract it out before the bond is taken.

Hearing

If the Department of Lands determines, after consultation with the Departments of Water Resources, Fish and Game, Environmental Quality and affected Indian tribes, that a proposed surface mining operation can reasonably be expected to significantly degrade adjacent surface waters, a public hearing will be conducted. Measures to protect water quality from nonpoint source water pollution will be discussed at the hearing. When there is reasonable potential for nonpoint source pollution, the director will require that the operator provide the Department of Lands with baseline pre-project surface water monitoring information and ongoing monitoring data during the life of the project.

Water Quality - Reclamation

Every surface mining operation must maintain state water quality standards by implementing Best Management Practices to protect existing beneficial uses from nonpoint sources of pollution. Operations often use settling ponds or tailing ponds to recycle process water in a closed system. Discharge of process waters to any surface water requires an NPDES Permit from the Environmental Protection Agency (EPA).

Upon completion of mining, or concurrently on large operations, affected lands must be backfilled, graded, topsoil replaced if present, and stabilized with vegetation. Some areas are better left as ponds for wildlife habitats. The reclamation is planned as part of the overall mining operation at the time of permit approval.

Site Inspections

The Department of Lands is required by the act to conduct periodic inspections to review compliance with the approved reclamation plan. If a violation is found, a remedy is discussed with the operator, and a period of time allowed for corrective action. On federal lands, the USFS and BLM monitor the permits and coordinate with the Department of Lands on compliance problems.

Penalties

The act allows the state to enjoin any operator who does not have an approved reclamation plan or bond. Violation of the act carries a civil penalty of \$500 to \$2,500 per day for each day of violation. If a person willfully violates the act, he is liable for fines of \$1,000 to \$5,000, or up to a year in prison, or both. Additionally, the state may seek costs to reclaim lands affected by the mining operation.

Frequently Asked Questions

- **Does the act apply to placer mining?** No. Placer and dredge mining of placer deposits are regulated under the Dredge and Placer Mining Protection Act, Idaho Code title 47, chapter 13.
- **Does the act apply to patented mining claims?** Yes. Patented mining claims are treated just like other private lands.
- **What is the bond rate?** Actual cost of reclamation not to exceed \$2,500 per acre of land to be affected. Bonds requested in excess of this amount must be approved by the board.
- **What about exploration?** You may explore using motorized earth moving equipment if you provide a notice of exploration to the Department within seven days of commencing operations. Holes and trenches must be closed within one year and reseeded. If exploration exceeds five contiguous or ten noncontiguous acres, a reclamation plan approval and bond are required.

- **What about using hazardous chemicals?** Any use of hazardous chemicals must be reviewed by the Idaho Department of Environmental Quality to meet state water quality standards.
- **What if I build tailings ponds or dams?** Any water containment dams over ten feet high, or tailings ponds over thirty feet high, must be reviewed by the Department of Water Resources. Settling ponds with dams under ten feet in height must be reviewed and approved by the Department of Environmental Quality.
- **Can the Department of Lands deny a reclamation plan?** Yes. The Department may deny a reclamation plan if it does not adequately address all the requirements of the Act.
- **Can I post bond with the U.S. Forest Service or Bureau of Land Management?** Yes. The state has a memorandum of understanding which allows the state to recognize valid bonds held by the other agency as long as such bonds are in an amount as great as or greater than the required state bond.
- **How do I appeal a decision of the Department?** The procedure is outlined in Rule 080 and Rule 160.07 of the Rules and Regulations Governing Exploration and Surface Mining Operations in Idaho.
- **Can my permit application be confidential?** Drilling results, reserve calculations and production data may be kept confidential under the provisions of Idaho Code Section 9-340 after July 1, 1993.