

**From:** [Bradley Kucera](#)  
**To:** [Rule Making](#); [Eric Wilson](#); [Todd Drage](#)  
**Cc:** [Mark Wilson](#); [Jim Kopp](#); [David A. Bailey](#); "[Benjamin Davenport](#)"; [Suzi Budge](#)  
**Subject:** . Comments to reclamation rule (Draft #5)  
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**Attachments:** [image001.png](#)  
[Comments on Rules Governing Mined Land Reclamation thru Dft5.pdf](#)

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Please find attached compiled comments related negotiated rulemaking for IDAPA 20.03.02, *Rules Governing Mined Land Reclamation*. The comments are submitted in review of rule changes through Draft #5 as proposed by Idaho Department of Lands.

Do not hesitate to contact me to discuss or gain clarifications with respect to the comments submitted herein.

Thank you,

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Mr. Eric Wilson  
Mr. Todd Drage  
Idaho Department of Lands  
300 N. 6th Street, Suite 103  
Boise, ID 83702

Re: Thompson Creek Mining Company – Comments to Draft #5 of the Proposed Rules Governing Exploration, Surface Mining, and Closure of Cyanidation Facilities – Docket No. 20-0302-1901

Dear Mr. Wilson and Mr. Drage:

Please accept this letter as the comments of Thompson Creek Mining Company (“TCM”) to Draft #5 of the Idaho Department of Lands (“IDL”) proposed rules entitled Rules Governing Exploration, Surface Mining, and Closure of Cyanidation Facilities (the “Proposed Rules”).

#### Scope of the Proposed Rules

The basis for the Proposed Rules is House Bill 141, enacted in early-2019 (“HB 141”). HB 141 requires that an operator include as part of a reclamation plan “[a] description of foreseeable water quality impacts from mining operations and proposed water management activities to comply with water quality requirements.” I.C. § 47-1506(a)(1)(vii). In this respect, HB 141 is very similar to the “3809 regulations” of the Bureau of Land Management (“BLM”), which states that a reclamation plan should “comply with applicable Federal and state water quality standards, included the Federal Water Pollution Control Act, as amended” (the FWPCA is now commonly referred to as the Clean Water Act or the “CWA”).

The BLM regulations very clearly defer to the permitting authority of the Environmental Protection Agency under CWA § 402 or to the environmental agencies of states, such as Idaho, that administer the National Pollutant Discharge Elimination System. In stark contrast, the Proposed Rules set up IDL as a duplicative regulator of water quality rather than deferring this regulation to the Department of Environmental Quality (“DEQ”) and the new Idaho Pollutant Discharge Elimination System (“IPDES”) program that will apply to all discharging mines in Idaho. Specifically, the Proposed Rules state that a reclamation plan must include:

- c. A description of foreseeable, site-specific impacts from acid rock drainage water quality impacts and the BMPs that will be used to mitigate any impacts from such acid rock drainage water quality impacts. The purpose of this is not to duplicate a SWPPP or IPDES permit, but to have the operator characterize waste rock, tailings, and other potential sources of water quality impacts. This characterization can be used to evaluate the effectiveness of the planned mine design, support design criteria for mine components, and evaluate the need and length of a post closure period.
- d. Water management plan for construction through post closure. This may include a SWPPP, IPDES permit application, Point of Compliance application to DEQ, documents and analysis done under NEPA, or any combination of these documents.
- e. A description of post closure activities that includes the following:
  - i. Water quality monitoring plan with sampling locations, frequencies, and constituents of interest at the time the application is submitted.
  - ii. Plan for segregating mine impacted water from storm water, and managing these waters through the affected area.
  - iii. Plan for managing mine impacted water to comply with Idaho surface and ground water quality standards.

Proposed Rule, p. 13. IDL's statement that the purpose of the Proposed Rule is not to duplicate an IPDES permit or a Stormwater Pollution Prevention Plan ("SWPPP") is meaningless; the substance of the Proposed Rule allows IDL to become a regulatory authority of water quality at mine sites. The Proposed Rule invades the jurisdiction of DEQ, and IDL has granted to itself the authority to independently prevent mining even in circumstances in which DEQ has issued an IPDES permit to the operator. This is not the intent of HB 141.

Similarly, the expertise to reasonably determine a proposed project's potential to impact water quality is not currently and should not be mingled with the interests of a governmental agency whose primary function is management of lands. The predictive models utilized to generate a myriad of potential water quality outcomes are based on numerous assumptions ranging from actual observations and site-specific parameters to conservative default values. The expertise necessary to evaluate the outcomes and arrive at a reasonable conclusion in a timely fashion is typically the result of both a science-based education and applied experience. This expertise lies with DEQ, not IDL. The detailed water quality provisions set forth above (and other similar provisions of the Proposed Rule) should be deleted.

TCM has reviewed, agrees with and hereby adopts the water quality-related comments made by the Idaho Mining Association to the Proposed Rule, including its comments pertaining to IDL's proposed "Best Management Practices."

The provisions of HB 141 related to the types of financial assurance available to mine operators are brief (less than a single page), straightforward and obviously intended to create flexibility for mining operators while ensuring that funds are available to complete reclamation and post-closure activities. I.C. § 47-1512(k)-(n). Notwithstanding, the Proposed Rule imposes some eight pages of new regulations that remove the flexibility the legislature intended to create. For example, HB 141 allows use of a trust fund for financial assurance and relies on the ability of the State Board of Land Commissioners (the "Board") to evaluate and determine the sufficiency of the trust fund. In the Proposed Rule, however, IDL has appointed itself to evaluate and determine the adequacy of the "proposed trustee, range of investments, initial funding, schedule of payments, trustee fees, and expected rate of return," all of which are "subject to review and approval by [IDL] through a memorandum of agreement with the operator." Proposed Rule, p. 31. Without any justification or basis in H.B. 141, IDL also creates new requirements for characteristics of the funds contributed to a trust, the trustee and payments made into the trust. Proposed Rule, pp. 31-32.

Similarly, where HB 141 states simply that "[p]roof of financial assurance may be demonstrated by ... a corporate guarantee," the Proposed Rule requires audited financial statements, financial criteria for a corporate guarantor, indemnity agreements by the operator and a parent corporation and many other requirements. Proposed Rule, pp. 32-33. By creating a vast array of complex regulatory requirements that do not exist or arise out of HB 141, IDL's obvious intent is to ensure that a corporate guarantee will never be a viable means by which to provide financial assurance for reclamation of a mining operation. These provisions are contrary to the intent of the legislature and effectively invalidate HB 141.

TCM believes that the Proposed Rule should be revised to reflect the intent and authority set forth in HB 141 without an overlay of regulatory requirements that frustrate and undermine (if not nullify) the legislative intent. The legislature clearly contemplated that the Board, not IDL, would be the decision-maker in matters related to financial assurance, and the Proposed Rule should be revised to be consistent with this intent.

### Submittal of Financial Assurance Before Mining

The Proposed Rule states:

**Submittal of Financial Assurance Before Mining.** Prior to beginning any mining on a mine panel covered by a reclamation plan, an operator shall submit to the director, on a Department mine reclamation financial assurance form, financial assurance meeting the requirements of this rule. If financial assurance is not received by the Department within eighteen (18) months of reclamation plan approval and operations have not begun, the Department will cancel the reclamation plan without prejudice. The operator must then resubmit the reclamation plan application and correct application fee to restart the approval process prior to mining. An extension to the eighteen (18) month period may be granted by the Department for reasonable cause given if the request is received prior to the end of that period.

Proposed Rule, p. 24.

No provision of HB 141 requires or remotely supports a rule that financial assurance be posted within 18 months of reclamation plan approval. HB 141 nominally amended I.C. § 47-1506 (“Operator – Duties Prior to Operation – Submission of Maps and Plans”) and I.C. § 47-1507 (“Plan – Approval or Rejection by Board – Hearing”). None of these amendments, however, allow IDL to unilaterally cancel an approved reclamation plan simply for expiration of an arbitrarily-selected period of time. The terms and conditions included in an approved reclamation plan are specifically tailored to the project and do not become invalid by the mere passage of time.

TCM is currently in care and maintenance. Notwithstanding, TCM has worked with the Interagency Task Force (“ITF”) for the Thompson Creek Mine (composed of BLM, IDL, DEQ, the Department of Water Resources, the Department of Fish and Game, and the U.S. Forest Service) to obtain approval of the reclamation plan for Phase 8 of its mining operation. TCM intends to commence Phase 8 when market conditions for molybdenum improve. The anticipated financial assurance for the Phase 8 reclamation plan is approximately \$82 million, about \$28 million of which is attributable to reclamation of lands under the jurisdiction of IDL.

Under the Proposed Rule, if TCM, as a responsible operator, works with the ITF and obtains approval of the Phase 8 reclamation plan, it would be required to post financial assurance for \$28-82 million (depending upon how the new rule is construed) within 18 months of plan approval notwithstanding that it may not commence Phase 8 for several years. Moreover, if Phase 8 does not start within 18 months, the Proposed Rule requires TCM to begin the reclamation plan approval process from scratch even though nothing will have changed that requires the plan to be re-evaluated and re-approved.

TCM should not be compelled by the Proposed Rule to unnecessarily post very expensive financial assurance within 18 months of reclamation plan approval as opposed to some period of time prior to commencement of Phase 8 mining. Also, automatic cancellation of a previously approved reclamation plan when there has been no modification to the plan and mining has not been initiated is an enormous waste of time, resources and funds for TCM, IDL and the other state and federal agencies that are part of the ITF.

This last three sentences of the provision of the Proposed Rule set forth above should be stricken. At the minimum, the decision to cancel an approved reclamation plan should be a discretionary determination (not mandatory) made by the Board, not by IDL.

#### Plans Approved Prior to July 1, 2019

Thompson Creek prepared and submitted its updated reclamation plan and estimate of financial assurance to the ITF in 2017. The ITF, including IDL, provided comments, after which TCM revised its proposal and submitted it in final form to the ITF on August 8, 2018. In this submission, TCM included a table showing reductions in the reclamation bond resulting from the update process. Immediately following this table, the letter states:

Thompson Creek Mine will secure replacement bonds in the new values as indicated above and ensure coverage is concurrent with termination of the prior. Thompson Creek Mine will proceed with these actions on or after October 1, 2018.

TCM received no response from IDL or any other member of the ITF in response to this letter. It therefore obtained the bond reduction riders from its bond providers and delivered them to IDL as well as the other applicable bonding agencies.

The Phase 7 reclamation bond five-year review process was completed at this time. The process worked exactly as intended by the ITF Memorandum of Understanding, and the communication among the members of the ITF was excellent. TCM provided a revised Phase 7 reclamation plan, revised it in light of comments received from the ITF, and the ITF parties agreed to that plan and to reduction of the reclamation bond. TCM tendered the bond reduction riders, which were accepted by IDL.

Consistent with HB 141, the Proposed Rule states “[r]eclamation plans approved prior to July 1, 2019 ... are not subject to the 2019 legislative amendments to the chapter regarding financial assurance and post-closure.” Proposed Rule, p. 43 (IDAPA 20.03.02.200.03). TCM therefore requests express determination that its Phase 7 reclamation plan update, approved in 2018, is not subject either to the requirements of HB 141 or the Proposed Rule.

TCM appreciates the opportunity to submit these comments and would be pleased to discuss them further with IDL or the Board.

Very truly yours,



Bradley Kucera  
TCM Environmental Superintendent

cc: Jim Kopp - TCM Mine Manager  
Benjamin Davenport – Idaho Mining Association