

From: [Williams, Dedra](#)
To: [Rule Making](#)
Cc: [Benjamin Davenport](#)
Subject: J.R. Simplot Comments on Rulemaking for new docket number 20-0302-2001
Date: Friday, May 22, 2020 01:08:47 PM
Attachments: [20200522--Simplot Comments House Bill-141 Financial Assurance Requirements.pdf](#)

Good afternoon Mr. Thomas,

The attached comments are on behalf of the J.R. Simplot Company regarding Rulemaking for new docket number 20-0302-2001.

Thank you,

Dedra

Dedra Williams

Environmental & Regulatory Affairs
Environmental Coordinator
208.780.7360



May 22, 2020

Sent via email to: rulemaking@idl.idaho.gov

Mr. Mick Thomas
Division Administrator
Minerals, Public Trust, Oil and Gas
Idaho Department of Lands
300 N. 6th Street, Suite 103
Boise, ID 83702

Re: Rulemaking for new docket number 20-0302-2001

Dear Mr. Thomas:

The Idaho Department of Lands (Lands) commenced a rulemaking in 2019 to implement House Bill No. 141, which was passed overwhelmingly by the 2019 legislature and signed by Governor Little. HB 141 was initiated by the Idaho Mining Association (IMA) with the purpose of updating Idaho's mining statute, in particular, for the specific area of financial assurance requirements for activities such as post closure activities. The J.R. Simplot Company (Simplot) was actively involved in the creation of HB 141. Simplot has extensive experience with a number of aspects of mining including reclamation, water quality monitoring, the design and operation of water treatment facilities, permitting of water discharges and financial assurance. Furthermore, Simplot has conducted mining operations in Idaho for decades and currently operates a major phosphate mine in southeastern Idaho. Thus, we have a direct interest in this rulemaking and also have considerable expertise and experience in the subjects associated with this rulemaking.

As discussed in prior written comments and in public statements, Simplot reiterates that HB 141 did not expand Lands authority to regulate water quality impacts from mining operations. The regulation and permitting of mine operations to protect water quality remains with the Idaho Department of Environmental Quality (IDEQ). It is incumbent upon Lands to assure there is no additional regulation related to water quality proposed within this rule, as well no conflicting or duplicative language regarding the regulation of water quality. Simplot has the following comments on Draft Rule Text #6 (Draft #6). Because some of Simplot's comments to Draft #5 were not addressed within Draft #6, they are repeated below.

Water Management

HB 141 has a provision for financial assurance being required for the water quality aspects of mine plans:

“A description of foreseeable water quality impacts from mining operations and proposed water management activities to comply with water quality requirements.”
[47-1506.a9)(1)(vii)]

However, Draft #6 has language that goes beyond the scope of changes HB 141 made in the mining statute.

The water quality requirements applicable to mining operations are shown in Figure 1.

Figure 1
Clean Water Act and CERCLA Requirements
Applicable to Mining for Financial Assurance



As Figure 1 shows, the “water management activities” applicable to mining operations include:

1. IDPES permits
2. Stormwater permits
3. Groundwater requirements
4. Cyanidation operations
5. CERCLA or CERLA like actions (that may be specific to water quality or water management)

The requirements necessary for each of these “activities” is set by other agencies other than Lands. Activities 1-4 are regulated by the IDEQ. Activity 5 could be the result of actions undertaken by either EPA, IDEQ, the U.S. Forest Service or the Bureau of Land Management. Therefore, there should be no new requirements placed by Lands relating to these activities, such as requiring water management plan. For these activities, either existing water management operations or plans developed to comply with activities 1-5, can be used to calculate the cost (and thus associated financial assurance) that HB 141 requires.¹

¹ Note: the State of Nevada has the Standard Reclamation Cost Estimator (<https://ndep.nv.gov/land/mining/reclamation/reclamation-cost-estimator>) which can be used to estimate costs for mining operations, including these activities.

The proposed language Section 070.04.d requires a water management plan for construction through post closure. The financial assurance for mining operations at the construction phase can be determined as follows:

- If treatment of a discharge (such as from a tailings impoundment) will occur, the costs associated with the operation of such a facility can be included.
- Groundwater monitoring costs if such monitoring is part of the IDEQ groundwater point of compliance approval.
- Specific costs related to stormwater controls if appropriate.

As to closure and post-closure, an initial estimate can be made at the mine (project) planning phase, though closure and post closure really should be updated prior to closure. This is because any actions needed to address meeting water quality standards would reflect conditions that exist and that time and conditions that are likely to exist during closure/post closure. Thus, such a “plan” would need to be updated prior to initiation of closure. Potential activities requiring financial assurance would be:

- Any continuing treatment of discharges.
- Groundwater monitoring (if appropriate/required)
- Any other actions required to address surface and ground water requirements.

HB 141 did not provide authorization to Lands for setting water management and related requirements. Thus, the following parts of Draft #6 need to be deleted or edited as follows:

010. Definitions:

02. Best Management Practices. Proposed deletion of “non point sources” in Draft #6 is inconsistent with implementation of the Clean Water Act (CWA). Idaho DEQ, which establishes requirements for compliance with CWA, often uses BMPs for non-point sources of water pollution. This would include potential non-point sources of water pollution at mines.

24. Water Balance: delete

25. Water Management Plan: delete

26. Waters of the U.S.: delete

070. Application Procedure – Reclamation Plan Requirements

04.c. Should be modified to: “A description of required water quality related activities, including IPDES permit(s), stormwater permits, groundwater quality point of compliance, and cyanidation permit requirements. Required water quality related activities will be updated prior to closure to address closure and post closure actions to meet water quality requirements.”

04. d. Delete

04.g. Should be modified to: “A summary of requirements related to water quality related activities such as IPDES permit limits and discharges, stormwater permit limits and discharges, and monitoring required for groundwater point of compliance plan.”

140. Best Management Practices

01.a. All proposed changes in this paragraph (as shown in Draft #6) should not be made. HB 141 authorized no changes in relation to BMPs.

03. Delete.

CERCLA Financial Assurance

Simplot appreciates the changed text in Draft #6, section 120.08 addressing financial assurance provided under a CERCLA order.

Financial Assurance Requirements for Existing and Soon to be Permitted Mines

The amendments made to Idaho’s mining law in 2019 (HB 141) had very specific language [see § 47-1518 (d) and (e)] on how these amendments applied to financial assurance requirements for:

- Currently operated or authorized to commence operations.
- Mining operations that have permanently ceased operations, and
- Mining operations that have submitted maps and plans for approval, but such plans had not been approved prior to July 1, 2019.

Draft Rule #6 needs to be modified to incorporate these changes in the statute.

Summary

As stated in our introduction, HB 141 provided a needed update for Idaho's mining law, including changes to financial assurance requirements. However, Draft Rule #6 goes beyond HB 141 statutory changes in regards to water management activities. The concept is for IDL to require financial assurance for water management activities. Those activities are administered primarily by IDEQ. Thus, it is not appropriate to place new water management related requirements in the rules governing mined land reclamation. Other needed changes in the Draft Rule are discussed in the comment letter provided by the Idaho Mining Association.

Please contact me at (208) 780-7365 if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Alan L. Prouty". The signature is stylized with a long horizontal stroke extending to the right.

Alan L. Prouty
Vice President, Environmental & Regulatory Affairs

C:
Ben Davenport, Idaho Mining Association