

From: [Williams, Dedra](#)
To: [Rule Making](#)
Cc: [Benjamin Davenport](#); [Lusty, Lori](#)
Subject: J.R. Simplot Company Comments House Bill 141, Docket Number 20-0302-2001
Date: Friday, July 24, 2020 10:57:50 AM
Attachments: [20200724--Ltr to IDL Simplot Comments House Bill-141.pdf](#)

Good morning Mr. Thomas,

The attached letter is on behalf of the J.R. Simplot Company regarding comments on House Bill 141, docket number 20-0302-2001.

Thank you,

Dedra

Dedra Williams

Environmental & Regulatory Affairs
Environmental Coordinator
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July 24, 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 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. 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 Department has published Draft No. 8 of IDAPA 20.03.02 Rules Governing Mined Land Reclamation. The J.R. Simplot Co. (Simplot) sincerely appreciates the work of Lands on this draft regulation; progress continues to be made to develop a regulation that fully implements HB 141. The comments Simplot provides today discuss several topics but are primarily focused on specifics related to financial assurance.

010. Definitions.

13. Neutralization

The definition of "neutralization" needs modified to more accurately reflect what this treatment technology does and also to remove any inference or requirements that this technology is needed to meet water standards. The definition implies that this treatment method results in "process water such that discharge or final disposal of those waters does not or will not violate any applicable standards and criteria."

Neutralization is a method of adjusting the hydrogen ion concentration of a water so that a pH of a specified range (usually a neutral pH of 7) is obtained. Neutralization may be one of multiple technologies that is used by a permittee so that the discharge meets applicable requirements. It is recognized that for some waters being treated using neutralization, certain contaminants (such as metals) may be removed. However, the term "neutralization" is specific to adjusting the hydrogen ion concentration.

Recommendation: Change language to:

“Removal of excess acidity or alkalinity by chemical treatment to provide a final pH approximately equal to 7.0.”

070. Application Procedure and Requirements for Other Mining Operations.....

04.c, d and h Reclamation Plan Requirements

Simplot supports the changes made by Lands to these subsections.

06. Monitoring Data

Draft No. 8 provides Lands the authority to request additional groundwater and surface monitoring data. As discussed in our July 10 comments, Lands has no authority over groundwater and surface water. Thus, it is not clear what Lands will do with this data in relation to existing regulatory authorities.

Recommendation. Delete the proposed language and replace with this:

“Operator shall provide any baseline data on groundwater or surface water quality gathered during the planning and permitting process for the operation.”

120. Financial Assurance Requirements.

09. Indirect Costs for Reclamation Cost Calculations

Simplot supports the changes made to this subsection.

122. Form of Financial Assurance

05.c. Trusts (equities)

Draft No. 7 did not provide for investments in individual stocks. Draft No. 8 also prohibits a trust from investing in individual stocks. HB 141 specifically included equities without qualifiers. The concept of a trust fund in HB 141 was taken from the federal hazardous waste rules (see 40 CFR 264.143 and 145), which are also incorporated into Idaho’s hazardous waste rules. These rules do not have such a prohibition.

Recommend. Modification of language to the following:

“Equities may include **individual stocks**, stock funds or stock index funds, but not ~~individual stocks or~~ direct investments in the operator’s company or parent company. Corporate equities must not exceed seventy percent (70%) of the total value of the trust fund.”

05.d. Trusts (bonds)

Like the comment on equities in a trust, Simplot’s July 10, 2020 comments recommended changes to the language in “d.” The ratings provided in Draft No. 8 do not cover the entire rating span for investment grade bonds; investment grade bonds begin at BBB- (Standard & Poor’s rating). Money market funds, because of the short-duration, and that they are typically issued by the federal or state governments, government agencies or banks, and are considered high quality.¹

Recommend. Change the language in “d” to the following:

“Money market funds or bonds of investment-grade rating (Standard and Poor’s rating of at least BBB- or equivalent from a nationally recognized securities rating service.)”

05.c, d. Trusts

Alternatively, “c” and “d” can be combined to use the language from the statute.

“The trustee shall investment the principal and income of the fund in accordance with general investment practices. Investments can include equities, bonds, and government securities.”

The language in “05” provides for a memorandum of agreement (MOA) with the operator to discuss the trustee, ranges of investments, initial funding, schedule of payments, etc. During the develop of the MOA, the specifics of the investment framework can be worked out so as to provide the growth that is needed for the fund along with the proper balance of risk.

09. Multiple Forms of Financial Assurance Accepted.

Simplot supports this language.

¹ For example, for banks that issue such securities are heavily regulated at must meet certain financial standards.

140. Best Management Practices

09. Tailings Impoundments

Simplot supports the changes made to this subsection.

Simplot appreciate the opportunity to submit these comments. Please contact me at (208) 7809-7365 if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Alan L. Prouty', with a long horizontal flourish extending to the right.

Alan L. Prouty
Vice President, Environmental & Regulatory Affairs

C:

Ben Davenport, Idaho Mining Association
Lori Lusty, J.R. Simplot Company