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August 13, 2020

Idaho Department of Lands
Attn: Amy Johnson - Rulemaking
300 N. 6th St., Suite 103
Boise, ID 83702

**Re: Rulemaking for IDAPA 20.03.02
Docket No. 20-0302-2001
Draft Rule No. 9**

Dear Ms. Johnson:

The Idaho Mining Association (IMA) appreciates the opportunity to provide the following general and specific comments to the subject Rule Draft No. 9.

GENERAL COMMENTS:

IMA appreciates IDL's efforts over the past 17 months to engage stakeholders on this rulemaking. It appears to us that we are very close to having a rule that reflects legislative intent of HB141, best practices in the industry as well as what is appropriate and necessary to provide adequate financial assurances to the state for mining projects. We look forward to working with the department on implementing these new standards and financial assurance tools. After the rulemaking session on August 10th, it appeared to IMA that the few remaining issues discussed were less about the content of the rule and more about the specific language of the rule. The few remaining areas of importance for IMA are outlined below. We hope that we that these suggestions will be received well and that the rule can be finalized in the short timeframe required to meet the timeline outlined in the August 10th rulemaking.

SPECIFIC COMMENTS:

A phased approach to providing financial assurance is important to IMA for all mining operations subject to Section 070 of the Rule. In order to avoid any confusion in the future on the applicability

of phased financial assurance to mining operations subject to Section 070, we request identical language in this Section as specified in Section 069.i.

IDL Proposed: IDAPA 20.03.02.070.06. Monitoring Data.

As discussed at the August 10 rulemaking session, IMA understands that IDL needs the authority to require the collection of monitoring data “during the life of the project” for certain mining operations when such data would not otherwise be required by IDEQ or other federal agencies. Most large mining operations are subject to extensive requirements from IDEQ and other federal agencies to collect monitoring data during the life of a project and during any post closure. We understand that IDL does not intend to impose additional monitoring requirements on such large mining operations. Accordingly, we suggest the following language to add clarity on what IDL is trying to accomplish:

070.06 Monitoring Data. *The Department shall, through consultation with DEQ, obtain the operator’s baseline data on ground water or surface water gathered during the planning and permitting process for the operation. The Department may also require the operator to furnish additional surface and ground water monitoring data during the life of the project for mining operations not subject to a permit, a groundwater point of compliance or other federal requirements to collect surface and ground water monitoring data.*

IDL Proposed: IDAPA 20.30.02.120.03. We understand that IDL prefers a timeline for the provision of financial assurance for mining operations and cyanidation facilities for administrative convenience, even though there is no such deadline in the applicable statutes. IMA recognizes IDL’s concern but nevertheless thinks the subsection needs to be revised. First of all, IMA believes a 24 month deadline for submission of financial assurance for all mining operations, including cyanidation facilities should be in the Rule for simplicity sake.¹ In agreeing to a 24 month deadline, IMA believes it is important to recognize that mineral development and withdrawal is dependent on commodity prices and significant capital investment and outlay. In many instances it may be necessary to obtain an extension to the 24 month deadline and such extensions should be granted as a matter of course for reasonable cause since a reclamation plan or permanent closure plan should still be valid even if financial assurance needs updated prior to operation of the mine. Due to the significant financial resources incurred by an operator in the preparation and approval of a reclamation plan or a permanent closure plan, it is important that such plans not be automatically voided by simply not complying with a somewhat arbitrary deadline and decisions on a request for an extension because of their importance should be made by the Director. A decision by the Director denying an extension request should also be subject to appeal procedures to the Board

¹ IDEQ is currently revising its Cyanidation permitting rules which may need to be slightly revised to ensure consistency on the timing of providing financial assurance after approval of a permanent closure plan by IDL and IMA will work with IDEQ to ensure both Rules are consistent on this topic.

and ultimately to a court pursuant to Idaho Code Section Idaho Code Section 47-1514. In order to address these concerns, we propose the following language:

03. Timely Financial Assurance Submittal. Financial Assurance must be received by the Department within twenty-four (24) months of reclamation plan or permanent closure plan approval or the Department will cancel the respective plan without prejudice. If financial assurance is not received within eighteen (18) months of plan approval, the Department will notify the operator that financial assurance is required prior to the above deadline. Extension to the deadline will be granted by the Director for reasonable cause given if a written request is received prior to the deadline. The Director's decision to deny a request for extension is subject to review by the Board pursuant to Idaho Code Section 58-104 and any final decision by the Board is appealable to district court pursuant to Idaho Code Section 47-1514. If financial assurance is not received by the respective deadline and no request for an extension has been received, the plan will be cancelled without prejudice. The operator must then submit a new plan application and application fee to restart the approval process.

IDL Proposed: IDAPA 20.03.02.120.15 Financial Assurance Release.

IMA suggests including appeal language in this section consistent with our comments in Section 120.03.

IDL Proposed: IDAPA 20.03.02.122.05.e.i. Trusts.

IMA appreciates IDL's recognition in this subsection that payments into a trust can be phased in a payment schedule agreed to between the operator and IDL in a memorandum of agreement. We think such an approach is consistent with the direction of the Legislature and prior comments made by IMA. In order to better clarify this subsection to capture this concept we propose the following language:

i. When used to cover reclamation or permanent closure costs, the trust fund will be initially funded in an amount to cover any surface disturbance in the first year of the trust fund. Annual payments into the trust will increase incrementally commensurate with the additional reclamation or permanent closure liability throughout the operation of the mine or permanent closure of the cyanidation facility.

IDL's Proposed IDAPA 20.03.02.122.05.e.iii. Post Closure. As pointed out in earlier comments, IMA believes a phased funding approach to post closure is also appropriate similar to our comments in subsection i. as the Legislature made no distinction on payments into a trust covering reclamation, permanent closure or post closure. IMA continues to believe that the RCRA regulations covering payments into a trust should be used for post closure financial assurance also. We appreciate IDL's recognition in the last draft rule that such payments into the trust to cover

post closure should be negotiated in the memorandum of agreement. However since the post closure period may be lengthy (thirty or more years) along with various obligations that occur during that time period, we would suggest the following revision to this subsection that is more in keeping with the Legislature's intent in Idaho Code Section 47-1512 and as compromise from IMA we offer the following language:

121.05.iii. *When used to cover post closure costs, including long-term water management, a payment schedule will be created in the memorandum of agreement.* The trust fund must be initially funded in an amount to cover the liability for the first five (5) years of post-closure. Annual payments into the trust will increase incrementally with the addition of post closure liability through the post closure period.

Section 122.05.a. Disbursements from the trust. We are not clear what is intended in this subsection. If the partial release of funds by the trust is due to substantial completion of portions of either a reclamation plan or post-closure, it should be governed by Idaho Code § 47-1512(h).

Thank you for the opportunity to comment on the subject draft Rule and we look forward to further negotiation of a proposed rule.

Kindest Regards,

A handwritten signature in blue ink, appearing to read "BJD", written over a horizontal line.

Benjamin J. Davenport

From: [Benjamin Davenport](#)
To: [Rule Making](#); [Amy Johnson](#); [Eric Wilson](#); [Mick Thomas](#)
Subject: IMA Comments to IDAPA 20.03.02 draft 9
Date: Thursday, August 13, 2020 4:48:22 PM
Attachments: [IMA.Comments.IDAPA20.03.02.draft 9.pdf](#)

Please see IMA's comments attached.
Thank you.

Ben

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