

From: [Fred Coriell](#)
To: [Rule Making](#)
Subject: H141 Rulemaking
Date: Sunday, June 30, 2019 11:56:45 PM
Attachments: [Coriell_H141_Rulemaking.pdf](#)

Dear Mr. Wilson,

Please see the attached .pdf for my comments regarding Rulemaking for IDAPA 20.03.02.

Regards,

Fred Coriell

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Fred Coriell
Renewable Renovations
PHIUS Passive House Consultant and Builder
PO Box 1168
McCall, ID 83638

208-315-3630

Dear Mr. Wilson,

Thank you for the opportunity to provide comment with regard to Minerals Rulemaking Docket: 20-0302-1901. My comments and recommendation are as follows.

140.01.a Nonpoint Source Control. Although the inclusion of the exemption language stricken out in Draft Temp Rule Text #2 (6/26/2019) “, ~~but shall not be required to do more than is necessary to preserve the condition of runoff from the affected land or the cyanidation facility prior to conducting any exploration, surface mining or cyanidation facility operations. These measures shall be among the first to be taken, if necessary, to protect water quality~~” could potentially discourage citizen Clean Water Act lawsuits, it’s enforceability to prevent such lawsuits is questionable.

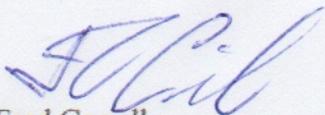
The phrase “These measures shall be among the first to be taken, if necessary, to protect water quality” does not provide certainty to an operator acquiring an historic mine site with known or unknown water quality standards compliance issues. The timeline needs to be clarified in order to prevent confusion about which party is responsible and when the party becomes responsible for Nonpoint Source Control. Some citizen CWA lawsuits allege current landowner non-compliance regardless of whether or not that current landowner was initially responsible for the pollution.

I recommend that 140.01.a read as follows—

Appropriate BMPs for nonpoint source controls shall be designed, constructed, and maintained with respect to site-specific ~~surface~~ mining operations or permanent closure activities. Operators shall utilize BMPs designed to achieve state water quality standards and to protect existing beneficial uses of adjacent waters of the state, ~~but shall not be required to do more than is necessary to preserve the condition of runoff from the affected land or the cyanidation facility prior to conducting any exploration, surface mining or cyanidation facility operations. These measures shall be among the first to be taken, if necessary,~~ **Operators that acquire previously mined land will assess current water quality conditions at the site and, if necessary, immediately begin implementing BMPs designed to protect water quality. State water quality standards as administered by DEQ, and including the protection of existing beneficial uses,** shall be the standard that must be achieved ~~by BMPs, unless the operator can show, and the director determines, that a lesser standard existed in the area to be affected prior to the commencement of the subject surface mining or exploration operations.~~

Again thank you for consideration of these comments.

Sincerely,



Fred Cornell
McCall, ID