

From: [Prouty, Alan](#)
To: [Rule Making](#)
Cc: [Eric Wilson](#); [Benjamin Davenport](#); [Lusty, Lori](#); [Williams, Dedra](#)
Subject: Comments on Mined Lands Reclamation
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[20191118--Simplot--Comments-to-IDL--MinedLandsReclamation-Final.docx](#)

Attached are comments from the J.R. Simplot Co. on the draft rule for mined lands reclamation.

Alan Prouty
Vice President, Environmental & Regulatory Affairs
J.R. Simplot Company
Tel. (208) 780-7365 | Cell. (208) 867-1645
alan.prouty@simplot.com





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

November 18, 2019

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

Dear Mr. Wilson:

The Idaho Department of Lands (Lands) has initiated a rulemaking to implement House Bill No. 141, which deals with mined land reclamation and financial assurance. 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, operates a phosphate mine in Idaho and has a direct interest in this rulemaking. Simplot has the following comments on Draft Rule Text #5 (Draft #5).

Water Management

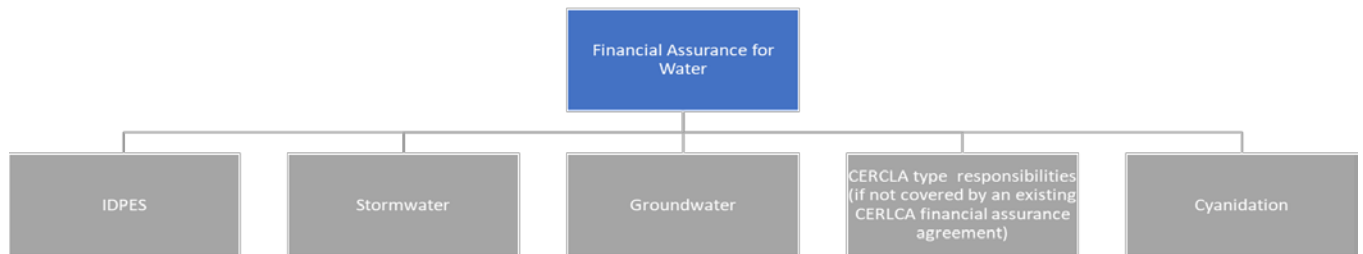
HB 141 has a provision for financial assurance being required for the water quality aspects of mine plans:

“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 #5 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 the Department of Lands (IDL). Activities 1-4 are regulated by the Idaho Department of Environmental Quality. Activity 5 could be the result of actions undertaken by either EPA, Idaho Department of Environmental Quality, the U.S. Forest Service or the Bureau of Land Management. Therefore, there should be no new requirements placed by IDL 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 141.¹

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.

Thus, HB 141 did not provide authorization to IDL for setting water management and related requirements. Thus, the following parts of Draft #5 need to be deleted or edited as follows:

010. Definitions:

02. Best Management Practices. Proposed deletion of “non point sources” in Draft #5 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.”

04. d. Delete

04.e. 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 #5) should not be made. HB 141 authorized no changes in relation to BMPs.

03. Delete.

CERCLA Financial Assurance

In Draft #5, section 120.08 addresses financial assurance provided to EPA under a CERCLA order. However, CERCLA financial assurance is provided to other organizations other than EPA. As an example, in Idaho today, CERCLA financial assurance is provided to the U.S. Forest Service and Idaho DEQ.

Recommend a new paragraph with the following language

New – “(09) A mine providing financial assurance to a state or federal agency through an order under the Comprehensive Environmental Response, Compensation and Liability Act is not required to submit financial assurance to the Department as described in Idaho Code 47-1512(n).”

Summary

Simplot appreciates the work of IDL to draft rules implementing HB 141. 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 #5 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 though, are administered primarily by Idaho DEQ. Thus, it is not appropriate to place new water management related requirements in the Rules Governing Mined Land Reclamation. And as noted, the language from HB 141 regarding CERCLA needs modification to encompass all the agencies involved in CERCLA activities.

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

Sincerely,



Alan L. Prouty
Vice President, Environmental & Regulatory Affairs

C:
Ben Davenport Idaho Mining Association