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To: [Rule Making: Eric Wilson](#)
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Subject: EPA Comments: Mined Land Reclamation Rulemaking Docket # (20-0302-2001) - Draft Rule Text No. 7
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Attachments: [EPA Comments IDL reclamation_draft7_20200709_pdf.pdf](#)

Hello Eric:

EPA Region 10 reviewed Draft Rule Text No. 7 which is the current version of IDL's potential revisions to its Rules Governing Mined Land Reclamation (Docket 20-0302-2001). Our main concerns relate to the removal of water management plan and practices requirements and the grandfather clause pertaining to existing underground mine operations. These comments and other comments are described in the attachment to this email.

We appreciate the opportunity to participate in the negotiated rulemaking process. Please let me know if you have questions about our comments.

Best Regards,

Patty

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U.S. EPA Region 10 Comments and Recommendations
Proposed Changes to Idaho Rules Governing Mined Land Reclamation, IDAPA 20.02.03
Draft Rule Text No. 7 (Docket No. 20-0302-2001)

July 9, 2020

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	General	<p>Following are general and specific comments on Draft Rule Text No. 7. EPA reviewed the draft rule text to determine the extent to which changes were made based on our comments submitted on Draft Rule Text No. 6 (EPA comments dated May 22, 2020). We also reviewed the Draft Rule in light of the House Bill 141 purpose that the rule more accurately reflect current industry and regulatory practice¹. We focused our review on areas where EPA has interests, which include water quality.</p> <p>We appreciate that Idaho Department of Lands (IDL) has included provisions related to waste management and water quality impacts in reclamation plans and financial assurance cost estimates. However, we are disappointed that the requirement for reclamation plans to include water management plans was removed. House Bill 141 included a general provision requiring foreseeable impacts to water quality from mining operations.² We believe that holistic water management planning upfront is the best tool to describe how water quality impacts will be prevented and appropriately managed at closure. We believe that requiring water management plans is an essential part of improving IDL rules to reflect current industry and regulatory practice. This is one of our main concerns with the draft rule and we have further comments on this issue and other issues below.</p>
2	001.05.b.iv.	<p><u>Existing operating underground mines.</u> The proposed rule is not applicable to “Underground mines that existed prior to July 1, 2019 and have not expanded their surface disturbance by 50% or more after that date”. As discussed in our past comment submittals, we recommend that IDL reconsider this provision since we believe that operating underground mines, regardless of when they were constructed or expanded should have a modern reclamation plan and financial assurance to ensure protection of the</p>

¹ HB141 Statement of Purpose

² State of Idaho. HB 141. Section 6, 47-1506, vii.

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		<p>State's land and water resources. This is especially relevant in Idaho, which essentially has no existing financial assurance requirements for underground mining operations.</p> <p>In addition, no basis is provided for the 50% or more surface disturbance increase as a trigger to comply with the new regulations. There could be significant closure and financial assurance needs that are triggered by less than a 50% disturbance increase, if for example, metal leaching or acid rock drainage is occurring at the mine site. The 50% surface disturbance expansion trigger for compliance does not appear to be consistent with current industry and regulatory practice. Grandfather clauses in other jurisdiction's regulations have compliance deadlines and we believe this would be also appropriate for Idaho. For example, BLM required that existing mines update financial assurance within 180 days of the effective date of its updated regulations. Nevada allowed for a 3-year compliance schedule for existing mines or before mine abandonment occurs (whichever comes first) to come into compliance with updated reclamation and financial assurance regulations. Alaska required immediate compliance for any new disturbance at existing mines, whether adjacent to, or on top of, existing disturbed areas.</p> <p>We recommend that this provision be replaced with a time limit that requires all existing mining operations to come into compliance within a certain period of time, regardless of whether or not there is a new surface disturbance. We recommend that the time limit be 180 days, consistent with BLM's requirements.</p>
3	General comment on scope and definitions in section 010	<p>The proposed rule includes reclamation plan and financial assurance requirements for "mining operations". The definition of mining operations can be found in Idaho Statute 47-1503.7, which states, "Mining operations means the activities performed on the surface of a surface or underground mine in the extraction of minerals from the ground, including the excavating of pits, removal of minerals, disposal of overburden, and the construction of haulage roads...".</p> <p>This definition of mining operations could include water ponds and tailings disposal facilities associated with ore processing facilities that are located at the surface of a mine site. However, this definition does not seem to include water ponds, tailings facilities, or other mine waste and water facilities at ore</p>

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		<p>processing facilities that are not located at the mine site. There are situations where ore is hauled from a mine site to an ore processing facility that is not located at the mine site itself. It is not clear that the rule covers these facilities, and we recommend that the scope of the rule include these facilities and that the rule language be clarified accordingly. Otherwise off-mine-site ore processing facilities escape reclamation and financial assurance requirements that would otherwise be required if they were at a mine site.</p> <p>As discussed in our previously submitted comments, we recommend that the rule apply to ore processing activities and waste disposal areas <u>that are connected to</u> the mining operation, even if not physically located at the mining operation and that the definitions and scope section of the rule make this clear.</p> <p>This would make the scope of the rule consistent with current industry and regulatory practice. See for example (underlines added for emphasis):</p> <ul style="list-style-type: none"> - BLM regulations define operations as “...all functions, work, facilities, and activities on public lands <u>in connection with</u> prospecting, exploration, discovery and assessment work, development, extraction, <u>and processing of mineral deposits</u> locatable under the mining laws; reclamation of disturbed areas; and all other reasonably incident uses, whether on a mining claim or not, including the construction of roads, transmission lines, pipelines, and other means of access...” (43 CFR 3809.5) - Nevada code defines mining operations to include “...all activities conducted...on or beneath the surface of land for the purpose of, <u>or in connection with</u> the development or extraction of any mineral.” (NAC 519A.045) - Alaska statute defines mining operations as “...each function, work, facility, and activity <u>in connection with the development, extraction, and processing of</u>: (i) a locatable or leasable mineral deposit except oil, gas, or coal; (ii) other materials or of a sand and gravel deposit; and (iii) each <u>use reasonably incident to the development, extraction, and processing</u> of a locatable or leasable mineral deposit or materials;” (AS 27.19.100(5))

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5	010.21	<p><u>Reclamation Plan.</u> The definition of “Reclamation Plan” is focused on reclamation of a “mine’s affected land”. We recommend the following edits (in italics) to the definition of Reclamation Plan to make it consistent with: (1) the broader definition of “Reclamation” in Part 010.20; (2) the purpose of the rules in Part 001.02; and (3) the HB 141 provision regarding water quality.</p> <p>“21. Reclamation Plan. A plan using a combination of maps, drawings, and descriptions that describes how a mine is constructed and how reclamation of a mine’s affected <i>facilities, land, and water</i> is accomplished <i>to meet objectives in 001.02.</i>”</p>
5	010.26 and 010.27	<p><u>Water Balance and Water Management Plan.</u> In our previous comments we supported the inclusion of water balance and water management plan requirements for all mining operations. We believe that IDL has taken a step backwards by removing this requirement for non-cyanidation facilities. Version 7 of the rule requires a water balance and water management plan for mine operations that use cyanide, but does not require this same information for mine operations that do not use cyanide. We have pointed out in previous comments, that non-cyanidation facilities can also have water-related risks to the environment due to acid rock drainage, metal leaching, and residuals from blasting agents and processing reagents that leach from waste rock, tailings, and mine walls.</p> <p>The rationale for removing the water management requirement for non-cyanidation facilities is that these facilities are covered by IPDES permits, stormwater pollution prevention plans (SWPPP), and State groundwater rules. This same rationale could be applied to cyanidation facilities, yet cyanidation facilities are still required to develop a water management plan.</p> <p>We recommend that water management plans be required for all mining operations since: (1) IPDES permits, SWPPPs, and groundwater permits don’t themselves require water management plans and only deal with discrete aspects of water management; (2) IPDES permits, SWPPPs, and groundwater permits include conditions that reflect operations during the permit term, not conditions at reclamation and closure which is the subject of this rule; and (3) IDL has not provided sufficient justification for including different requirements for non-cyanidation facilities.</p>

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		<p>Water management plans for mining operations typically include plans for operations and closure. This is relevant to reclamation planning and financial assurance since water management requirements at closure might be different than what is required during operations and potentially more costly. Understanding these needs up front through water management planning is an important part of reclamation planning for any mining operation (not just cyanide facilities) to ensure sufficient closure funding. Reclamation and closure water management planning is not included in IPDES permits and SWPPPs during the mine permitting stage when financial assurance is established. It is unlikely that information in the IPDES permit, SWPPP, and point of compliance developed at the beginning of mining operations would be sufficient to determine water management needs and costs at closure since the conditions of these permits are based on expected water chemistry and flows and certain aspects of water management during the 5-year permit terms at the beginning of operations. Water balance, water chemistry, and management typically change between operations to closure and these changes can be significant.</p> <p>We recommend that IDL reinsert the requirement that a water management plan be required for all mining operations for the reasons above and to make this rule consistent with current industry and regulatory practice.</p>
10	070.03	<p><u>Map Requirements.</u> We agree with the addition of “dry stack tailings piles, tailings ponds, or process fluid ponds” to the map requirements text. In addition, we recommend that maps also show the locations of surface water diversions and underground mine openings. Section 069.04 requires that maps show the location of open pits. Since the regulations now apply to underground mining operations, we recommend that they be treated similarly to surface mining operations and that maps be required to identify underground mine openings. A recommended revision is provided below:</p> <p>“03. Map Requirements. Maps shall be prepared in accordance with Subsection 069.04 of these rules with the addition of any <i>underground mine openings, surface water diversions, dry stack tailing piles, tailings ponds, or and process fluid ponds.</i>”</p>

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10	070.04.c. and d.	<p><u>Reclamation Plan Requirements.</u> We support the revised text that a Reclamation Plan must include a “description of foreseeable water quality impacts and the BMPs and other measure and practices that will be used to mitigate such water quality impacts” (070.04.c.). We encourage IDL to retain this language.</p> <p>As noted in our Water Management Plan comment above, we recommend that a water management plan be incorporated back into the reclamation plan requirements (070.04.d.) in order to achieve the goal of describing measures that would be used to mitigate water quality impacts at closure.</p>
10	070.04.g.i.	<p>We appreciate that the rule text has been revised to specify that the post-closure activities includes the proposed length of the post closure period (070.04g.). We recommend that water management language in rule text version 6 that was deleted in version 7 be retained. Otherwise, we recommend the following edits (in italics and strike-out) for clarity and consistency with the water quality language in 070.04.c.</p> <p>“i. A summary of requirements related to <i>measures, practices and monitoring to reduce water quality impacts at post-closure, related activities</i> such as IPDES individual and stormwater permit limits, and discharges, and monitoring plans and stormwater permit limits and discharges, and monitoring required for a groundwater point of compliance <i>locations and monitoring</i> plan. “</p>
10 - 11	070.04.	<p><u>Reclamation Plan Requirements.</u> Consistent with our past comments, we recommend that the following additional items be included in the part 070.04 list of information to include in reclamation plans:</p> <ul style="list-style-type: none"> - Removal or stabilization of buildings, structures, and support facilities. - The Permanent Closure Plan section of this rule has specific requirements related to information to include for caps and covers at cyanidation facilities (Part 071.02.f.). We recommend that these requirements also be included for caps and covers included in Reclamation Plans since this provides important detail on water quality and reclamation control. - The Permanent Closure Plan section of this rule requires that closure plans provide information on how the operator will comply with Federal and state hazardous and solid waste management laws

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		during operations and closure (Part 071.02.i). We recommend that this provision also apply to Reclamation Plans since non-cyanidation mining sites also use, store, and generate solid and hazardous wastes.
12	070.05.b.	<u>Operating Plan Requirements.</u> We support inclusion of the waste rock management plan. In addition, we recommend that IDL consider requiring a tailings management plan. While IDWR regulates tailings dams, other aspects of tailings management and tailings facilities are relevant to stability and prevention of land and water contamination. A tailings management plan is particularly relevant for underground mines where a portion of the tailings could be backfilled in the underground mine and should be done so in a manner that does not cause groundwater contamination or stability concerns.
12	070.05.c.	<u>Operating Plan Requirements.</u> We agree with inclusion of water quality monitoring and recommend that IDL consider including other types of monitoring such as stability monitoring (piles, pit walls, dams) and soil monitoring (for both contaminants and concurrent reclamation success).
12	070.05.f.	<u>Operating Plan Requirements.</u> Per our previous comments, we recommend the following edits (in italics) related to throughput and timelines for ore processing operations. Processing timelines are important since there are situations when processing will occur after mining is complete when mine rates exceed processing rates, where any historic materials on-site are reprocessed, and where ore is accepted from other mines. In addition, processing throughputs are an important factor in determining the quantity of tailings that would be produced. <i>"f. Estimated throughput and timeline for mining and ore processing from start through closure".</i>
23	120.01.	<u>Submittal of Financial Assurance Before Mining.</u> The underlined part of the proposed rule sentence "If financial assurance is not received by the Department within eighteen (18) months of reclamation plan approval <u>and operations have not begun</u> , the Department will notify the operator that financial assurance is required within twenty four (24) months of plan approval or the Department will cancel the reclamation plan without prejudice." This language seems to imply that there could be situations where

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		operations have begun before financial assurance has been approved. This is inconsistent with Parts 070.01 and 071.01 that construction and operation not occur before filing a reclamation plan and financial assurance required of the rules. We recommend that this be clarified.
24	120.12.	<p><u>Financial Assurance Review for Reclamation Plans.</u> The draft rule requires that financial assurance cost estimates for Permanent Closure Plans for cyanidation facilities be updated every three years. In addition, IDL can employ a qualified independent party to verify the accuracy of revised Permanent Closure Plan cost estimates.</p> <p>Regular financial assurance review for Reclamation Plans for non-cyanidation facilities has a lower bar which appears to be tied only to increases in impacted land acres. Part 120.12 states "...At the beginning of each calendar year, the operator shall notify the director of any increase in the acreage of affected land which will result from planned mining activity within the next twelve (12) months". We recommend that the financial assurance review requirement for Reclamation Plans be the same as the requirements for Permanent Closure Plans since there could be changes to operations or environmental impacts at non-cyanidation facilities that do not significantly increase acreage but would substantially impact the reclamation cost estimate, such as changes in water management or treatment. In addition, IDL should be afforded the ability to employ an independent party to verify the accuracy of cost estimates for non-cyanidation facilities.</p> <p>We recommend that financial assurance review requirements for Reclamation Plans be revised to be the same as for Permanent Closure Plans by either revising Part 120.12 to be consistent with 120.18, , or revising 120.12 to include Reclamation Plans as well as Permanent Closure Plans.</p>
38	140.03	<u>Best Management Practices and Reclamation.</u> Draft rule text no. 6 included practices for water management and treatment which have been removed in draft rule text no. 7. Our comments submitted on rule text no. 6 supported this language and offered some edits. For reasons discussed above under Water Management Plan, we recommend that this language be re-inserted back into the rule and that IDL consider the comments that we offered on draft rule text no. 6.

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41	155.03.	<u>Frequency of Inspections.</u> The proposed regulations require that cyanidation facilities be inspected at least once per year and that other mining operations be inspected at least one every five years. We recommend more frequent inspections occur for facilities with cyanide and the potential for acid drainage and metal leaching. BLM inspects operations that use cyanide or other leachate or where there is significant potential for acid drainage at least 4 times per year (43 CFR 3809.600).