

From: mary.anne.nelson@deq.idaho.gov
To: [Rule Making](#)
Subject: DEQ Comments
Date: Friday, July 10, 2020 04:25:04 PM
Attachments: [image006.png](#)
[2020_0709_IDL_Draft7_Comments.docx](#)

Good afternoon,

Thank you for the opportunity to participate in the Mined Land Reclamation negotiated rulemaking. Attached are DEQ's comments. We look forward to discussing these and others next week.

Regards,



Mary Anne Nelson, PhD | Administrator

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Our mission is to protect human health and the quality of Idaho's air, land, and water.



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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Brad Little, Governor
John H. Tippets, Director

July 10, 2020

Subject: Docket 20-0302-2001 Mined Land Reclamation negotiated rulemaking – comments on draft #7

Dear Mr. Wilson:

DEQ appreciates the opportunity to provide comments on Draft Rule 7 regarding mine reclamation plans. The following comments are intended to help further discussions as DEQ and IDL coordinate on implementing the various legal authorities granted by Title 47 Chapter 15 Idaho Code and Title 39 Idaho Code.

DEQ continues to evaluate some sections for consistency with the cyanidation rules and intends to provide further comment for a later date. Generally, however, please change “groundwater” to “ground water” in the following sections: 010.08, 070.04, and 071.02.f.

To help further the development of a robust set of rules, DEQ submits the attached comments for consideration.

Sincerely,

A handwritten signature in blue ink that reads "Mary Anne Nelson".

Mary Anne Nelson, PhD
Administrator, Surface and Wastewater Division

c: Michael McCurdy, Administrator Waste and Remediation Division, DEQ
Dana Swift, Remediation Bureau Chief, DEQ
Lisa O’Hara, deputy Attorney General
Mark Cechini-Beaver, deputy Attorney General

Attachment

Comment 1 – 001.04 Other Laws

a. Idaho water quality standards established in Title 39 Chapter 1-36 Idaho Code; IDAPA 58.01.02, “Water Quality Standards”, and ground water quality rule established in Title 39 Chapter 1 Idaho Code; IDAPA 58.01.11 “Ground Water Quality Rule”, administered by the Department of Environmental Quality

DEQ recommends including the statute with reference to the BMP definition in this subsection.

Comment 2 – 010.03 DEQ supports the definition of Best Management Practices (BMP) as written in draft 7. This language is directly from Title 39 Chapter 36 Idaho Code and defines what a BMP is consistent with statute. DEQ does not believe that defining BMPs consistent with Idaho Code confers additional regulatory authority where it does not belong.

Comment 3 – 010.26 Water Balance and 010.27 Water Management Plans

After a thorough review of the proposed rule, these definitions do not appear in any portion of the rule affecting other sites than cyanidation facilities. Therefore DEQ proposes that it is appropriate that these definitions remain specific to cyanidation facilities and has no objection to the definitions as proposed.

Comment 4 – 070.04 Reclamation Plan Requirements.

DEQ notes that under 070.04, reclamation plans **must include all of the information required under Subsection 069.05**

069.05.a Where surface waters are likely to be impacted ~~and~~ or when requested by the director, documents identifying and assessing foreseeable, site-specific ~~nonpoint~~ sources of water quality impacts ~~upon adjacent surface waters and the BMPs the operator will use to control such impacts during surface mining and reclamation from mining operations and proposed management activities to comply with water quality requirements;~~

070.04.c A description of foreseeable, site-specific impacts ~~from acid rock drainage water quality impacts and the BMPs and other measures and practices that will be used to mitigate any impacts from such acid rock drainage-water quality impacts. The purpose of this is not to duplicate a of water quality impacts. This characterization can be used to evaluate the effectiveness of the planned mine design, support design criteria for mine components, and evaluate the need and length of a post closure period This may be met by including a summary of requirements from a SWPPP, IPDES permit, ground water point of compliance, and other permits or approvals related to foreseeable water quality impacts from waste rock, tailings, and other potential sources on the affected land.~~

DEQ supports the intent of the proposed change in 070.04.c of including the “and other measures and practices”. As the definition for BMPs is specific to nonpoint source pollution, DEQ sees this requirement of the reclamation plan as intended to provide IDL with information necessary to accurately and adequately evaluate the financial assurance needed for the reclamation plan. Including in the reclamation plan those elements required to comply with both storm water and direct discharge permits provides IDL a more accurate picture regarding the financial burden

associated with reclaiming a mine site. DEQ would suggest, however, that the apparent duplication between 069.05.a and 070.04.c could be handled with the following language:

069.05.a Where surface waters are likely to be impacted ~~and~~ or when requested by the director, documents identifying and assessing foreseeable, site-specific ~~nonpoint~~ sources of water quality impacts ~~upon adjacent surface waters and the BMPs the operator will use to control such impacts during surface mining and reclamation~~ from mining operations and proposed management activities, such as BMPs or other measures and practices, to comply with water quality requirements;

070.04.c To meet the requirement of 069.05.a for this subsection, the documents identifying foreseeable, site-specific sources of water quality impacts from waste rock, tailings, and other potential sources may include, but are not limited to:

- i. an approved SWPP;
- ii. an IPDES permit;
- iii. a DEQ approved ground water point of compliance; and
- iv. other permits or approvals related to foreseeable water quality impacts

Comment 5 – 070.04.d. DEQ supports that added language here. Identification of capital investments needed to create structures necessary for compliance with storm water or discharge permits, or BMPs, is appropriate for determining the overall financial burden associated with reclamation and therefore is needed information in determining the financial assurance aspect.

Comment 6 – 070.04.g – reclamation plan requirements

DEQ suggests the following changes for clarity.

- i. A summary of requirements related to water quality; meeting applicable surface and ground water quality standards; ~~and related~~ activities such as IPDES permit limits and discharges, storm water permit limits and discharges; and monitoring required for a groundwater point of compliance plan.

Comment 7 – 090.03 Adjustments.

DEQ suggests the following changes for clarity.

Adjustments to an approved reclamation plan may be made by agreement between the director and the operator, if the adjustment is consistent with the overall objectives of the approved reclamation plan and so long as applicable surface and ground water quality standards will be met. Adjustments are due to changes that are smaller than material changes.

Comment 8 – 091.04. Adjustment.

DEQ suggests the following changes for clarity.

Adjustments to an approved permanent closure plan may be made by agreement between the director and the operator, if the adjustment is consistent with the overall objectives of the approved permanent closure plan and so long as applicable surface and ground water quality standards will be met.

Comment 9 – 120.20

DEQ supports striking section 120.20 because it is redundant with section 160.02.

Comment 10 – 140.03 – Water Management or Treatment

DEQ submits that including in the reclamation plan requirements or expectations for elements to address water management is appropriate. We note that diverting storm water away from potential pollutant sources through various means is a requirement of the IPDES and storm water permitting programs. Diversion of storm water is also a cost-effective and reasonable practice for preventing pollution of storm water and thereby reducing the cost of overall treatment. DEQ believes that including elements of water management in the reclamation plan will provide needed and necessary information to IDL in the determination of long term financial resources needed. DEQ proposes the following adjustments to 140.03.

140.03. Water Management or Treatment. Mine impacted waters that contain metals or other contaminants subject to the standards in IDAPA 58.01.02 or 58.01.11 must be captured on the mine site and should be segregated from Storm water should be managed to the maximum extent practicable to avoid contact with or contamination by pollutant sources on the mined land. Any mine impacted waters that are discharged to or that reach surface waters are may be subject to the IPDES requirements of IDAPA 58.01.25. Specific water management or treatment methods may include, but are not limited to:

a. Capturing water runoff at the toe of a waste rock dump, tailings impoundment, or ore stockpile, or other source of mine impacted waters.

~~b. Adding lime, flocculants, or other inputs to modify the physical or chemical properties of the water.~~

b. e. Filtering water.

c. d. Moving mine impacted storm waters by ditches, pipes, pumps, or other methods around a site.

d. e. Holding water in ponds.

Comment 11 – 140.09 – DEQ is still considering this language and intends to have further comment at the July 17th meeting.