

From: [Williams, Dedra](#)
To: [Rule Making](#)
Cc: [Lusty, Lori](#); [Benjamin Davenport](#)
Subject: Rulemaking for New Docket Number 20-0302-2001
Date: Friday, July 10, 2020 11:21:09 AM
Attachments: [20200710--Ltr to IDL House Bill-141 Comments.pdf](#)

Mr. Thomas,

The attached letter is on behalf of the J.R. Simplot Company regarding Rulemaking for new docket number 20-0302-2001.

Thank you,

Dedra

Dedra Williams

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July 10, 2020

SENT VIA EMAIL TO: rulemaking@idl.idaho.gov

Mr. Mick Thomas
Division Administrator
Minerals, Public Trust, Oil and Gas
Idaho Department of Lands
300 N. 6th Street, Suite 103
Boise, ID 83702

Re: Rulemaking for new docket number 20-0302-2001

Dear Mr. Thomas:

The Idaho Department of Lands (Lands) commenced a rulemaking in 2019 to implement House Bill No. 141, which was passed overwhelming by the 2019 legislature and signed by Governor Little. 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. Simplot has extensive experience with a number of aspects of HB 141 including mining, reclamation, water quality monitoring, the design and operation of water treatment facilities, permitting of water discharges and financial assurance. Thus, we have a direct interest in this rulemaking and also have considerable expertise and experience in the subjects associated with this rulemaking.

Today, Simplot is providing comments on Draft No. 7 of IDAPA 20.03.02 Rules Governing Mined Land Reclamation. Simplot sincerely appreciates the work of Lands on this draft regulation, especially the changes to address water quality management aspects of the rule. The comments provided today cover several subjects.

010. Definitions.

03. Best Management Practices (BMP)

Our recommendation is that Lands keep the original rule language. The revised language in Draft No. 7 is generally acceptable but includes a reference to the "state water quality management plan." Simplot is not aware of such a document and what regulatory effects such a plan has. If Lands wants to use language

similar to Draft No. 7, we recommend deleting the reference to the “state water quality management plan.”

070. Application Procedure and Requirements for Other Mining Operations.....

04.c. Reclamation Plan Requirements

Simplot appreciates the changes made by Lands to this subsection. We do recommend though that the language in this subsection should mirror the language in Idaho Code 47-1506(a)(1)(vii).

Recommendation. Change language to:

“A description of foreseeable water quality impacts from mining operations and proposed water management activities to comply with water quality requirements. This may be met by including a summary overview of requirements from a SWPPP, IPDES Permit, groundwater point of compliance, BMPs and other permit or approvals related to foreseeable water quality impacts.”

06. Monitoring Data

Draft No. 7 provides Lands the authority to request additional groundwater and surface monitoring data. However, Lands has no authority over groundwater and surface water. Thus, it is not clear what Lands will do with this data in relation to existing regulatory authorities. Applicable groundwater and surface water monitoring requirements come from the following regulations/authorizations:¹

Groundwater: State of Idaho groundwater rules provide a framework for managing groundwater quality in relationship to mining. This typically results in a “point of compliance” (POC) determination by the Department of Environmental Quality. As a part of this POC determination, baseline groundwater data is gathered and then monitoring during the mining operations and post closure is required.

Stormwater: These permits are currently issued by EPA, but soon will be issued by the Department of Environmental Quality. Such a permit requires periodic monitoring of stormwater discharges.

Discharge Permit. The IPDES program, administered by the Idaho Department of Environmental Quality, regulates point source water discharges. Such permits require monitoring of the discharge(s). Also,

¹ The list provided is not meant to be exhaustive, as authorizations for certain types of impoundments (example is tailings ponds) or other features (wetland disturbance), may include some level of monitoring.

such permit can require water body monitoring.

Federal Authorizations/Record of Decisions (ROD). For mining operations on federal lands, often the ROD will require surface or groundwater monitoring if there are potential impacts.

Recommendation. Delete the proposed language and replace with this:

“Operator shall provide any baseline data on groundwater or surface water quality gathered during the planning and permitting process for the operation.”

120. Financial Assurance Requirements.

01. Submittal of Financial Assurance Before Mining

In Draft No. 7, there are a number of methods (forms) available for providing financial assurance. However, the Draft does not specifically state that an operator can use a mix of financial assurance forms to satisfy the financial assurance requirements.

Recommend. Add the following just after the first sentence in 01.

“The financial assurance submitted can utilize a single or a combination of financial assurance forms. The forms that can be used are: corporate surety bonds, collateral bonds, letters of credit, real property, trusts, blanket reclamation fund or corporate guarantee. For the corporate guarantee form, no more than 50% of the required financial assurance can be provided.”

09. Indirect Costs for Reclamation Cost Calculations

Draft No. 7 has very prescriptive requirements for determining indirect costs. It is not clear the basis of such prescriptive cost ranges. Considerable work has been done in the mining industry to provide standardized protocols/methods for calculating costs. Simplot recommends that the Department provide in the Rules the ability to utilize such protocols/methods.

Recommend. Delete the first sentence in 09 and replace with:

“Reclamation and permanent closure cost calculations shall include the following indirect costs. Indirect costs should be established within the percentages given. If a different percentage is used, then

justification must be given. Alternatively, an operator may propose the use of an industry recognized standardized reclamation cost estimation tool for use in reclamation and/or permanent closure cost estimates and the use of the tool's associated indirect costs which are established using the project direct costs as identified."

122. Form of Financial Assurance

05.c. Trusts (equities)

Draft No. 7 prohibits a trust from investing in individual stocks. The concept of a trust fund in HB 141 was taken from the federal hazardous waste rules (see 40 CFR 264.143 and 145), which are also incorporated into Idaho's hazardous waste rules. These rules do not have such a prohibition.

Recommend. Modification of language to the following:

"Equities may include **individual stocks**, stock funds or stock index funds, but not ~~individual stocks or~~ direct investments in the operator's company or parent company. Corporate equities must not exceed seventy percent (70%) of the total value of the trust fund."

05.d. Trusts (bonds)

The language in "d" is unclear as to the quality of money market funds and the bond ratings provided do not cover the entire rating span for investment grade bonds. Money market funds, because of their short-duration, and that they are typically issued by federal or state governments, government agencies or banks, and are considered high quality securities.² Investment grade bonds begin at BBB- (Standard & Poor's rating).

Recommend. Change the language in "d" to the following:

"Money market funds or bonds of investment-grade rating (Standard and Poor's rating of at least BBB or equivalent from a nationally recognized securities rating service.)"

140. Best Management Practices

09. Tailings Impoundments

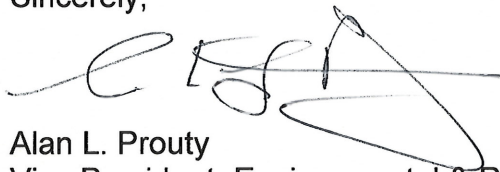
HB141 did not make any changes in regards to impoundments. However

² For example, for banks that issue such securities are heavily regulated at must meet certain financial standards.

Draft No. 7 does contemplate making changes to this section of the rule. The technology and practices for tailings management is changing. One of those is dry stacking. Simplot is supportive of looking at a rule change to reflect these changes. Also, if such a change were to be made, the change needs to recognize that certain impoundments associated with mineral processing of phosphate ore are currently subject to a rulemaking with the Department of Environmental Quality.³ Thus, such impoundments need to be excluded from any rule change made by Lands.

Simplot appreciate the opportunity to submit these comments. Please contact me at (208) 7809-7365 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alan L. Prouty', with a stylized flourish extending from the end.

Alan L. Prouty
Vice President, Environmental & Regulatory Affairs

C:

Ben Davenport, Idaho Mining Association
Lori Lusty, J.R. Simplot Company

³ See HB 367, passed by the 2020 legislature and signed by Governor Little, March 2020.

