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To: [Rule Making; Eric Wilson](#)
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Subject: Mined Land Reclamation Rulemaking Docket # (20-0302-2001) - Draft Rule Text No. 8: US EPA Region 10 comments
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Attachments: [EPA Comments IDL reclamation draft8 20200724 pdf.pdf](#)

Hello Eric:

EPA Region 10 reviewed Draft Rule Text No. 8 which is the current version of IDL's potential revisions to its Rules Governing Mined Land Reclamation (Docket 20-0302-2001). We continue to recommend edits pertaining to water management activities and we recommend more consistency in some of the requirements between non-cyanide using and cyanide-using mine operations where there is technical justification. Our comments are attached.

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. 8 (Docket No. 20-0302-2001)**

July 24, 2020

Page	Section	Comment and Recommendation
	General	<p>Following are specific comments on Draft Rule Text No. 8. 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. 7 (EPA comments dated July 9, 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 continue to believe that water management plan and reclamation plan requirements for all large mining facilities should be similar regardless of whether cyanide is used at the facility. As we have discussed in previous comment submittals, the potential for water quality impacts at facilities that do not use cyanide can be significant, due to acid rock drainage and metal leaching seepage from waste rock and tailings facilities, pit walls, and underground mine walls. We appreciate that Idaho Department of Lands (IDL) has included provisions related to waste management and determining foreseeable water quality impacts in reclamation plans and financial assurance cost estimates. However, we continue to recommend that a water management plan be required of all mine operations. We also recommend that reclamation and closure plan review requirements and inspection time frames be similar for all mine facilities, regardless of whether cyanide is used. In addition, having consistent requirements would enable IDL to combine sections of the rule that are currently separate for cyanidation and non-cyanidation facilities, which will result in simplification and reduction in the rule length.</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”. In our past comment submittals, we recommended that IDL reconsider this provision since we believe that operating underground mines,</p>

¹ HB141 Statement of Purpose

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		<p>regardless of when they were constructed or expanded should have a modern reclamation plan and financial assurance to ensure protection of the State’s land and water resources. This is especially relevant in Idaho, which essentially has no existing financial assurance requirements for underground mining operations. 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 previously recommended 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 new surface disturbance. We now understand that this requirement is based on language in HB-141 and therefore cannot be revised in the regulation. For the reasons above, we do not believe that this provision is consistent with standard industry and regulatory practices, but because it is based on the HB language we will no longer comment on this issue. We appreciate IDL explaining the basis of this provision.</p>
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 that includes maintenance of water quality; (2) the purpose of the rules in Part 001.02 that includes protection of aquatic resources; and; (3) the HB 141 provision regarding inclusion of water quality in reclamation plans.</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 waters of the state</i> is accomplished <i>to meet objectives in 001.02.</i>”</p>

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9	069.05.a	<p><u>Reclamation Plan Requirements.</u></p> <p>This section relates to information required of reclamation plans where “surface waters are likely to be impacted”. We recommend that “surface waters” be replaced with “waters of the state” so that proposed management activities address both groundwater and surface water. This is consistent with the definition of reclamation in part 010.20 and the HB-141 language pertaining to water quality (which does not appear to distinguish between surface and groundwater). Specifically, the HB-141 language states that a reclamation plan contain “<i>A description of foreseeable water quality impacts from mining operations and proposed water management activities to comply with water quality requirements.</i>”²</p> <p>We recommend several edits to the language in this section to more closely follow the HB-141 language as follows (edits in italics and strikeout). For example, HB-141 refers to “water management activities” as opposed to “measures and practices”:</p> <p style="padding-left: 40px;">a. Where surface <i>waters of the state</i> are likely to be impacted or when requested by the director, documents identifying and assessing foreseeable site-specific sources of water quality impacts from mining operations and proposed management activities, such as BMPs or other measures and practices <i>water management activities</i>, to comply with water quality requirements;</p>
10	070.04.c.	<p><u>Reclamation Plan Requirements.</u></p> <p>This subsection lists information that could be provided to meet requirements of 069.05.a. which pertains to meeting water management requirements of reclamation plans. The list of information includes SWPPPs, IPDES permits, and groundwater point of compliance. As pointed out in our previous comments, these permits are based on information developed for the permit term that is not typically reflective of water management activities for closure. In addition, since financial assurance is not required for these permits, the information developed for these permits may not have sufficient detail to calculate a financial assurance cost estimate for reclamation and closure water management. Please see our general comment above and comments on draft rule text no. 7 for details and a recommendation that water</p>

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

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		<p>management plan requirements for reclamation plans be consistent with water management requirements for cyanidation facilities.</p> <p>If the current text is retained, then we recommend the following edits so that it is clear that these permits are only a subset of the information that could be required and to be more consistent with 069.05.a. and the HB-141 language (edits in italics and strikeout).</p> <p>b. To assist in meeting the requirements of 069.05.a. of these rules, <i>information may include, but not be limited to a summary of water management</i> requirements from a SWPPP, IPDES permit, groundwater point of compliance, and other permits or approvals or BMPs <i>or other water management activities to comply with water quality activities during reclamation</i> related to foreseeable water quality impacts on the affected land.</p>
10	070.04.d.	<p><u>Reclamation Plan Requirements.</u></p> <p>This section of the regulations requires that reclamation plans include structures that will be built to help implement a SWPPP, IPDES permit, point of compliance or other permits or approvals related to foreseeable water quality impacts. To be consistent with 070.04.c., we recommend that the language be expanded to include BMPs and other water management activities (language from HB-141) that might not be addressed with sufficient detail in the permits. For example (changes in italics):</p> <p>d. Structures that will be built to help implement a SWPPP, IPDES permit, Point of Compliance or other permits or approvals <i>or BMPs and other water management activities to comply with water quality requirements</i> related to foreseeable water quality impacts on the affected land.”</p>
11	070.04.h.	<p><u>Post-closure activities.</u></p> <p>The rule text related to post-closure water management activities could be made more clear. As it reads, the language seems to imply that monitoring would only be required for the ground water point of compliance. Monitoring could also be required of other of other permits. We recommend the following</p>

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		<p>edits (in italics and strike-out) for clarity and also to allow operators to submit additional information (beyond what would be required of the permits) if needed to support the cost estimate.</p> <p><i>“i. A summary of procedures and methods for water management and monitoring. This could include information from, including any likely post-closure IPDES permit, stormwater permit, and monitoring required for any groundwater point of compliance, along with sufficient information to support a cost estimate for such water management activities.”</i></p>
12	070.05.b.	<p><u>Operating Plan Requirements.</u> We support inclusion of the waste rock management plan. In addition, consistent with our previous comments we recommend that IDL consider requiring a tailings management plan. While IDWR regulates tailings dam stability, other aspects of tailings management and tailings facilities are relevant to prevention of land and water contamination.</p>
10-12	070.	<p><u>Application Procedure and Requirements for Other Mining Operations Including Hardrock, Underground, and Phosphate Mining.</u> Part 071.05.b. allows IDL to employ an independent party, paid for by the applicant, to verify the accuracy of the permanent closure plan cost estimates. Per Part 000,. this same provision should apply to reclamation plan cost estimates. We recommend that IDL include a provision similar to 071.05.b. in Part 070. So that it is clear that this also applies to reclamation plan cost estimates.</p>
40-41	155.03.	<p><u>Frequency of Inspections.</u> As discussed in our previous comments, we recommend that the minimum inspection frequency for all mining operations be similar (once per year). We have not seen a technical justification for requiring a minimum 5- year inspection frequency for mining operations that do not use cyanide, while facilities that use cyanide are inspected yearly.</p>