

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

August 13, 2020

Page	Section	Comment and Recommendation
	General	EPA reviewed Draft Rule Text No. 9 to determine the extent to which changes were made based on our comments submitted on Draft Rule Text No. 8 (EPA comments dated July 24, 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 practice ¹ . We focused our review on areas where EPA has interests, which include water quality.
3	010.09.b.	<p><u>Material Change</u> This part pertains to the definition of material change for non-cyanidation facilities related to water management changes and appears to be limited to surface water management activities. In contrast, the definition of material modification for cyanidation facilities is a significant increase in the potential to cause degradation of “waters of the state” (010.10.a.ii.) and therefore includes groundwater as well as surface water. We recommend that the definition of material change for non-cyanidation facilities be made more consistent with that of cyanidation facilities, unless there is a technical justification for not doing so. HB-141 requires that reclamation plans contain “A description of foreseeable water quality impacts from mining operations and proposed water management activities to comply with water quality requirements.”² The HB-141 language does not distinguish that water quality means only surface water quality. In addition, since HB-141 refers to foreseeable water quality impacts, we recommend that significant changes to foreseeable water quality impacts be included in the definition of material change that could trigger a reclamation plan amendment. Based on this reasoning, following are recommended edits (in italics and strikeout):</p> <p style="padding-left: 40px;">b. Substantially modifies surface water management or a water management plan, not to include routine implementation and maintenance of BMPs, <i>or other mining operations changes that increase the potential to cause significant changes to foreseeable impacts to waters of the state;</i></p>

¹ HB141 Statement of Purpose

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

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9	069.05.a	<p><u>Reclamation Plan Requirements.</u> This part pertains 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. Our recommended change is consistent with the definition of reclamation (010.20) which states that a reclamation objective is to maintain water quality (and does not distinguish that the objective only pertains to surface waters). This change would also be consistent with HB-141 language pertaining to water quality which, as noted above, does not distinguish between surface and groundwater.</p> <p>We recommend the following edits to the language in this section to more closely follow the HB-141 language and reclamation definition (edits in italics and strikeout):</p> <ol style="list-style-type: none"> 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, to comply with water quality requirements;
10	070.04.c.	<p><u>Reclamation Plan Requirements.</u> 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 representative of water management activities at closure and post-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 comments on draft rule text no. 7 for details and a recommendation that water management plan requirements for reclamation plans be consistent with water management requirements for cyanidation facilities.</p>

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		<p>We recommend the following edits so that it is clear that the specified permits may be only a subset of the information that could be required and to be more consistent with HB-141 language which refers, not to permits, but to a “<i>description of...proposed water management activities</i>” (edits in italics).</p> <p>b. To assist in meeting the requirements of 069.05.a. of these rules, a summary of <i>water management activities and requirements</i> 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 anticipated water quality requirements 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. This part dropped BMPs that were included in the part above. We recommend that the language be expanded to include BMPs to be consistent with 070.04.c. In addition, we recommend that the language be expanded to include other water management activities in order to be inclusive of structures that might not be specified in the listed permits and to be consistent with HB-141 language requiring a description of “<i>proposed water management activities</i>”. Following are recommended edits (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>and BMPs and other water management activities</i> related to foreseeable water quality impacts on the affected land.</p>
11	070.04.f.	<p><u>Geotechnical Analysis</u></p> <p>We support the inclusion of geotechnical analysis for stockpiles and pit walls. We recommend that the draft rule also require a geotechnical analysis for underground mines to evaluate the potential for unplanned subsidence that could impact the land surface or waters of the state during mining operations or at closure. This is pertinent to assessing whether reclamation could be needed to minimize or reclaim impacts due to subsidence. Such a provision could alternately be included in 070.04.g.</p>

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11	070.04.h.	<p><u>Post-closure activities.</u> The draft rule text related to post-closure water management activities could be made more clear. As it reads, the text implies that monitoring would only be required for the ground water point of compliance. Monitoring could also be an important component to monitor effectiveness and water quality impacts for other permits and post-closure water management activities. We recommend the following edits (in italics and strike-out) for clarity.</p> <p><i>“i. A summary of procedures and methods for water management and monitoring. This could include information from, including any likely 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>
11 -12	070.05.	<p><u>Operating Plan Requirements.</u> We support inclusion of the operating plan requirements. In addition, consistent with our previous comments we recommend that IDL consider requiring a water quality management plan. See our previous comments for rationale supporting this comment.</p>
12	060	<p><u>Monitoring Data</u> We support this part which allows IDL to obtain baseline groundwater and surface water data. In addition, we recommend that soil data also be obtained if desired by IDL. This is an important consideration for proposed mining projects in areas that have been impacted by historic mining activities so that mine operators and IDL can distinguish historic impacts from new mining operation impacts and focus the reclamation plan accordingly. Following are recommended edits (in italics and strikeouts):</p> <p>06. Monitoring Data. The Department will, through consultation with DEQ, obtain the operator’s baseline data on ground water, or surface water, <i>or soils</i> gathered during the planning and permitting process for the operation, and require the operator to furnish additional monitoring data during the life of the project.</p>
23	120.01	<p><u>Submittal of Financial Assurance Before Mining</u> We support the edits made to this section which makes it clear that financial assurance meeting the rule requirements must be submitted before beginning mining. We recommend that this language be retained and</p>

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		further clarified that the reclamation plan and financial assurance must be approved by the State before mining begins.
41	155.03.	<p><u>Frequency of Inspections.</u></p> <p>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>

From: [McGrath, Patricia](#)
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Subject: Mined Land Reclamation Rulemaking Docket # (20-0302-2001) - Draft Rule Text No. 9: US EPA Region 10 comments
Date: Thursday, August 13, 2020 6:31:10 PM
Attachments: [EPA Comments IDL reclamation draft9 20200813 .pdf.pdf](#)

Hello Eric:

EPA Region 10 reviewed Draft Rule Text No. 9 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-related issues and offer recommendations for clarity and consistency within the rule and with HB-141. 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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