

From: gmr@yaho.com
To: [Rule Making](#)
Subject: Docket 20-0302-2001 Final Comment
Date: Friday, October 02, 2020 12:46:15 PM
Attachments: [IDL Proposed Rules - Final 10012020.pdf](#)

Hello,

Happy Friday!

Please find attached my comments on IDL's proposed Rules Governing Mined Land Reclamation.

I trust someday, somehow IDL will come around to see the opportunity they have to work with small-operators and individual hardrock miners in Idaho before we are totally a thing of the past. As they pointed out before, there are not too many of us left in the state and while that is true, that is no reason to eradicate us totally from the state through excessive regulatory burdens (ie. rules) written for large, multi-national companies.

Historically, it was the small miners that founded the northern territories of the state in the late 1800's. Without the individual hardrock miners, Idaho would not have become what it is today. Yet these rules, as proposed, will eliminate the opportunity for any individual and small-operator to every dream of mining in Idaho again.

Thank you for this opportunity and Happy Weekend,

Alan Gilda, Idaho Bucket-Miner
Mullan, Idaho

October 1, 2020

Subject: Docket 20-0302-2001 Mined Land Reclamation Final Rules

Dear Mr. Wilson,

Thank you for the opportunity to comment one last time on proposed rules 20.03.02 governing mined lands in Idaho.

My concerns about the negative impact these rules will have on individual hardrock miners and small operators in Idaho were not an issue prior to House Bill 141 which added underground hardrock mining to Title 47, Chapter 15. For the small-miner and the individual hardrock bucket-miner who wants to continue working his mining claim (x sq-ft to a few acres), the proposed regulatory costs will be a death blow.

Please consider my continued comments about how these proposed rules are perceived to be discriminative and severe against individuals and small operators (ex. hardrock bucket-miners, small-miners) when applied as written. These rules will effectively prohibit and ban us from being able to mine in Idaho hereafter because of the unreasonable fee and burdensome permitting costs they will impose upon us.

Please note I use the term "small-miner(s)" to mean a small operator, including an individual who use to conduct limited hardrock mining operations in Idaho, who disturb a few square-feet to a few acres in search for minerals and metals to sell in hopes of covering some costs. A "small miner" may be semi-commercial, but most are part-time or weekend, hobby-sized operations with a limited budget and limited income.

1 – Base Application Fee

- The Law says, 47-1506(g) The board may require a reasonable fee for reviewing and approving a permanent closure plan or reclamation plan. "The Board **MAY** require...."

The Law does not say "MUST" as IDL asserts in Section 2 of their Zero-Based Regulation Prospective Analysis. So in the Law, requiring a fee is optional and requiring a \$1,000 base application fee for a small-miner who has limited disturbance is contrary to the Law's directive that if IDL decides to charge a fee, that it must be "reasonable".

IDL responded to my concern about the fee in their September 16, 2020 Negotiated Rulemaking Summary by saying, "It is unclear what fee would be charged for the types of operation described...At the current time no fee is charged because the described activity appears to be more properly classified as exploration." Classifying my operation as "Exploration", while giving me much more latitude is nice, it is not a legal solution. As soon as I try sell a product to cover costs, IDL will deem that illegal and I will be fined and imprisoned. So it seems like IDL is not addressing the concern, but just sweeping it aside.

As for IDL's question about what to charge. Some of Idaho's adjoining states do not charge a fee for permitting small mining operations (just like IDL use to do in the recent past). But to answer IDL's question, keep it simple! Just charge a "reasonable" \$ per acre fee for 0-100, >100-1,000, +1,000 acres.

Governor Little's Executive Order 2020-01 cites, "excessive regulations at all levels of government can impose high costs on businesses, inhibit job growth, and impeded private sector investment". This fee will impose a high cost on the small-miner and inhibit job growth and private sector investment into the mining industry in Idaho.

IDL did not seem to address the Governor's directive in their Zero-Based Regulations Prospective Analysis by conducting a critical and comprehensive review of the new rules. This proposed rule does **NOT** reduce the overall regulatory burden or remain neutral for the small-miner. Instead, this rule imposes new and excessive regulatory burden upon all small operators and individuals who want to or use to mine in Idaho.

2 – Tiers based on size.

- IDL says in their "Zero-Based...Analysis", Section 5 about Impacts to Idaho businesses, with special consideration for small businesses, "Fees are tiered based on size, so smaller mines will pay less."

That is not true for hardrock mines. 068.01 shows a small-miner has to pay the same base application fee to disturb a few sq-ft as a large company who disturbs 100 acres.

So in truth, small miners will NOT "pay less" as IDL claims. They actually have to pay significantly more than larger mines will, on a per acre basis. (Large Miner: \$1,000/100ac = \$10/ac of disturbance. Small-Miner: \$1,000/0.01 ac = \$10,000/acre equivalent).

IDL says there is no issue though because these rule have not applied to small mine operations in the past, but proposed rule 001.05 says, "These rules apply to **ALL**...mining operations..."

The base application fee and ALL requirements of these rules apply "to **all**...mining operations". So even the small-miner who only disturbs a few sq-ft to a few acres, as compared to the large mining companies who disturb 100's and 1,000's of acres, is subjected to them and all the costly permitting requirements – ie. no exceptions.

Even though the Law states, "The board may require a reasonable fee...", a base application fee of \$1,000 is not "reasonable" for a small-miner who only disturbs a few sq-ft to a few acres over the lifetime of their operation. For a big company who disturbs 10's of acres and 100's of acres, that is probably a reasonable fee.

3 – Regulatory Burden

Governor Little's Executive Order 2020-01 directed Idaho agencies to thoroughly review the cost and benefit of each rule to identify and eliminate costly ones, the ones that impose high costs on businesses...

Instead of addressing the Governor's concerns about excessive regulations and their impact on Idaho businesses like small miners, IDL seemed to just ignore small mining businesses (individual and small operators) in their proposed rules.

The proposed rules will require a small-miner to provide the same permit material as big

companies. I will now be forced to hire consultants or professionals just like the big companies to provide all the information the proposed rules will require, or to try to justify why my small sq-ft of disturbance area does not need the excessive information and studies IDL wants.

IDL said in the public hearings that my concerns are unnecessary because based on the size of my operation I can just operate under exploration. For some reason, IDL continues to refuse to include such options for a small-miner in their proposed rules. So unless they include the statement in the rules that they kept telling me at the meetings, all small-miners will still be required to undertake their cost prohibitive permitting process.

IDL did respond to my continued concerns for the small operator in their September 16, 2020 Negotiated Rulemaking Summary by saying, "IDL has not required a reclamation plan for operations as described in the comment."

That is true. Under the **old rules**, "IDL has not required...", a reclamation plan because such mines (large and small) were not regulated by IDL.

But the new proposed rules, 001.05, is very clear, "These rules apply to **all** exploration, mining operations, and permanent closure of cyanidation facilities on all lands in the state, regardless of ownership".

So while in the past, IDL has **not** required a reclamation plan, by refusing to provide some sort of exception or addition or category for the small-miner, we will **NOW** be required to submit a full reclamation plan before ever turning over one shovelful of dirt.

I do not have a problem submitting a reasonable application for permission to hobby-mine, unless I am already permitted and bonded with a federal agency. But, I do not have the funds for their unreasonable base application fee, nor for the costs for scientific expertise to provide all the material they want to require so I can disturb a few sq-ft or acres to hobby-mine

- Statutory Authority Limitations

In the Negotiated Rulemaking Summary, Sept 16, 2020, IDL says they cannot work with individuals and small-miners because there is no statutory authority to do so. But that lack of statutory authority did not stop them from burdening the applicant with an additional expense not authorized in Law to send the reclamation plan to a third party to review. The Law very clearly only grants the Board and the Department responsibility to review and approve the reclamation plan – NOT a third party at an additional fee/cost.

So, if IDL can add this additional expense and action not authorized by Law, then they can surely work with hardrock bucket-miners and individuals.

There are at least two places IDL can work with the small-miners to solidify what they keep telling me and officially stated in their Negotiated Rulemaking Summary of September 16, 2020.

One -

001.05.b. These rules do not apply to:

(v) a small mine operation conducted in accordance with Section 060.

or

Two -

060.03 Notification. Any operator desiring to conduct exploration or a small mine operation using motorized earth-moving equipment....shall notify the Department...

-and-

06. Every operator who conduct exploration or a small mine operation affecting less than two (2) acres shall...

Both of these proposals do not decrease IDL regulatory oversight nor are outside of IDL's statutory authority to protect the environment from small mine operators.

Thank you for your time and consideration of these important matters concerning IDL's proposed Rules Governing Mined Land Reclamation in Idaho and Governor Little's Executive Order 2020-01 to address and reduce excessive regulations that impose high costs on businesses, inhibit job growth, and impede private sector investment into Idaho's mining future.

Sincerely,

Alan Gilda, Hardrock Bucket-Miner
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