

From: [Bradley Kucera](#)
To: [Rule Making](#)
Subject: Comments from Review of Rulemaking IDAPA 20.03.02 Final Draft
Date: Tuesday, October 06, 2020 02:35:37 PM
Attachments: [image001.png](#)
[10062020 Comments on Rules Governing Mined Land Reclamation Final Draft.pdf](#)

Please find attached TCM's comments relative to our review of Rulemaking IDAPA 20.03.02 Final Draft. These comments (See attached) are prepared and submitted per instruction provided in the Idaho Administrative Bulletin dated September 16, 2020 – Vol. 20-9SE.

Thank you,

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October 6, 2020

Dustin Miller, Director
Idaho Department of Lands
300 N. 6th St., Suite 103
Boise, ID 83702

Re: Rulemaking for IDAPA 20.03.02 - Docket No. 20-0302-2001

Final Draft Negotiated Rule for Rules Governing Mined Land Reclamation Submitted by the Idaho Department of State Lands - Idaho Administrative Bulletin (September 16, 2020 – Vol. 20-9SE).

Dear Mr. Miller:

Thompson Creek Mining Company (“Thompson Creek”) provides the following comments to the Idaho Department of Lands (“IDL”) Proposed Rules entitled “Rules Governing Mined Land Reclamation” as published in the Idaho Administrative Bulletin, dated September 16, 2020, beginning at page 1015 (the “Proposed Rules”).

Section 120 of the Proposed Rules concerns “Financial Assurance Requirements.” Subsection 120.03 states:

03. Timely Financial Assurance Submittal. Financial assurance must be received by the Department within twenty-four (24) months of reclamation or permanent closure plan approval or the Department will cancel the respective plan without prejudice. If financial assurance is not received within eighteen (18) months of a plan approval, the Department will notify the operator that financial assurance is required prior to the twenty-four (24) month deadline. Extensions will be granted by the director for reasonable cause given if a written request is received prior to the deadline. If financial assurance or an extension request is not received by the deadline, the plan will be canceled. The operator must then submit a new plan application and application fee to restart the approval process.

As described in section 120.22 of the Proposed Rules, certain of the Director’s decisions, including “plan cancellation” as described in section 120.03 above, are subject to appeal to the State Land Board and, subsequently, to District Court:

22. Appeal Process for Financial Assurance Decisions. All decisions regarding any plan cancellation, financial assurance reduction, or financial assurance release as described in Section 120 of these rules are subject to appeal as described in Section 58-104, Idaho Code, and Section 47-1514, Idaho Code.

Thompson Creek believes that a decision by the Director made under section 120.03 not to grant an extension of time in which to submit financial assurance should be appealable to the State Land Board and subject to judicial review. Thompson Creek requests that section 120.22 be revised as follows:

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22. Appeal Process for Financial Assurance Decisions. All decisions regarding any denial of a request to extend the time in which to submit financial assurance, plan cancellation, financial assurance reduction, or financial assurance release as described in Section 120 of these rules are subject to appeal as described in Section 58-104, Idaho Code, and Section 47-1514, Idaho Code.

Thompson Creek requested this revision to the Proposed Rule as part of the negotiated rulemaking process. IDL did not include the proposed revision and also did not explain the rationale for its decision in its Negotiated Rulemaking Summary, dated September 11, 2020.

By omitting Thompson Creek's proposed revision of section 120.22, a mine operator can only appeal cancellation of a reclamation plan under section 120.03. Adding Thompson Creek's proposed revision allows the operator to appeal denial of an extension of time in which to post financial assurance. An appeal of a decision to deny an extension request is a much more realistic and sensible point in the financial assurance process from which to take an appeal than after cancellation of the plan.

For example, Thompson Creek has posted an approximate \$35 million in reclamation bonding for Phase 7 of its mining operation. Phase 7 has been completed and the mine is currently in "care and maintenance." Thompson Creek's Phase 8 Reclamation Plan has already been approved by IDL; however, Phase 8 will not commence until market conditions for molybdenum improve. Thompson Creek will submit a request to extend the time in which to submit financial assurance for Phase 8, which, if denied by the Director, would require Thompson Creek to either: (1) submit a reclamation bond of approximately \$85 million for a phase of mining that has not begun and may not commence for several years in the future; or (2) wait for its approved reclamation plan to be cancelled, appeal the cancellation and, potentially, start the reclamation plan process from scratch.

An extension of the time in which to submit financial assurance may be granted under section 120.03 for "reasonable cause." While Thompson Creek is cautiously optimistic that the Director would recognize the irrationality of posting millions of dollars in financial assurance for a mining operation that has not commenced due to unfavorable climate (metals price or other), a mine operator should be able to appeal denial of an extension request. "Reasonable cause" is a subjective metric that, in the scheme of the Proposed Rules, could have drastic consequences for a mining operation. Forcing a mining company to provide financial assurance pending an appeal on plan cancellation serves no purpose of the state since the surface disturbance for which bonding must occur has not commenced. The potential for arbitrary outcomes resulting from undefined terminology such as "reasonable cause" should be unacceptable to both the Board and mine operators.

Thompson Creek respectfully requests that section 120.22 be revised as set forth above to allow an appeal to the State Land Board of the Director's decision not to grant an extension of the time in which to post financial assurance. Thompson Creek appreciates the opportunity to submit these comments.

Very truly yours,



Bradley Kucera

TCM Environmental Superintendent

cc: Jim Kopp - TCM Mine Manager
Benjamin Davenport – Idaho Mining Association