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**To:** [Rule Making](#)  
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**Subject:** Comments on Docket 20-0000-2000F relating to IDAPA 20.03.02  
**Date:** Wednesday, October 07, 2020 10:44:27 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[2020\\_1007\\_IDL\\_DEQ\\_comments\\_Mined\\_Land.pdf](#)

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Good morning,

Please find attached comments on IDL's rule IDAPA 20.03.02. DEQ appreciates the opportunity to work with our sister agency to provide regulations that are clear and concise and easy for the regulated community to follow.



**Mary Anne Nelson, PhD | Administrator**

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*Our mission is to protect human health and the quality of Idaho's air, land, and water.*



STATE OF IDAHO  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY

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Brad Little, Governor  
Jess Byrne, Director

October 7, 2020

Subject: Docket 20-0000-2000F; Comments on IDAPA 20.03.02 Rules Governing Mined Land Reclamation

Dear Mr. Wilson:

DEQ appreciates the opportunity to provide comments on the Rules Governing Mined Land Reclamation. The following comments are intended to help further discussions as DEQ and IDL coordinate on implementing the various legal authorities granted by Title 47 Chapter 15 Idaho Code and Title 39 Idaho Code.

To help further the development of a robust set of rules, DEQ submits the attached comments for consideration.

Sincerely,

A handwritten signature in blue ink that reads "Mary Anne Nelson".

Mary Anne Nelson, PhD  
Administrator, Surface and Wastewater Division

c: Michael McCurdy, Administrator Waste and Remediation Division, DEQ  
Dana Swift, Remediation Bureau Chief, DEQ  
Jerri Henry, Administrator, Drinking Water Protection and Finance Division, DEQ  
Lisa O'Hara, Deputy Attorney General  
Mark Cecchini-Beaver, Deputy Attorney General

## Attachment

### Comment 1 – 010 Definitions

There are several definitions that do not mirror the definitions in IDAPA 58.01.13, Rules for Ore Processing by Cyanidation that are noted below:

1. The definition of 'material modification or material change' (subsection 010.10) is not the same as the definition in subsection 007.08 of the Rules for Ore Processing by Cyanidation (IDAPA 58.01.13); see page 2757 of the Omnibus Docket.
2. The definition of 'pollutant' (subsection 010.17) does not match the definition in subsection 007.17 of the Rules for Ore Processing by Cyanidation (IDAPA 58.01.13); see page 2757 of the Omnibus Docket.
3. The definition of 'treatment' (subsection 010.25) does not match the definition in subsection 007.25 of the Rules for Ore Processing by Cyanidation (IDAPA 58.01.13); see page 2758 of the Omnibus Docket.

### Comment 2 –140.09 Tailings Facilities

The best management practices and reclamation for mining operations and permanent closure of cyanidation facilities should meet applicable surface and ground water quality standards. The “hazard” standard for tailings facilities in the current version of the rule does not prevent a situation where the abandonment of a tailings facility creates a violation of the Water Quality Standards (IDAPA 58.01.02) or the Ground Water Quality Rule (58.01.11). DEQ believes there is a potential contradiction or at least a tension between 140.09.01 regarding nonpoint source control and meeting applicable water quality standards and 140.09 regarding a hazard to human or animal life. Applicable water quality standards protect the beneficial uses of waters of the state. Not constituting a “hazard to human or animal life” is not equivalent to protecting water quality that provides for the protection and promulgation of aquatic life and recreation in on and the water.

Requiring compliance with surface and ground water quality standards as part of best management practices ensures water quality standards are satisfied during the abandonment of tailings facilities; the criteria for best management practices should be meeting applicable surface and ground water quality standards. Therefore, DEQ requests the addition of the yellow highlighted text below:

**Page 1045 of Omnibus Docket, Section 140.09. Tailings Facilities.** All tailings ponds, dams, or other types of tailings facilities shall be designed, constructed, operated, and decommissioned so that upon their abandonment, the dam and impoundment area will **meet applicable surface and ground water quality standards and** not **otherwise** constitute a hazard to human or animal life.

Alternatively, if the added language is not agreeable, DEQ requests the following change:

**Page 1045 of Omnibus Docket, Section 140.09. Tailings Facilities.** All tailings ponds, dams, or other types of tailings facilities shall be designed, constructed, operated, and decommissioned according to best management practices for nonpoint source control ~~so that upon their abandonment, the dam and impoundment area will not constitute a hazard to human or animal life.~~