

STATE BOARD OF LAND COMMISSIONERS

October 20, 2020

Regular Agenda

Subject

Omnibus Rulemaking – Adoption of Pending Fee Rules

Question Presented

Shall the Land Board adopt the Department's proposed fee rules as pending fee rules (including the amended IDAPA 20.03.02, Rules Governing Mined Land Reclamation) and approve the Department's Omnibus Rulemaking Notice for Adoption of Pending Fee Rules?

Background

To ensure the continuity of previously approved administrative rules, the State Board of Land Commissioners (Land Board) adopted omnibus temporary rules on February 18, 2020, to become effective if the Idaho Legislature did not otherwise approve or reject the rules submitted for their review. The Legislature adjourned the 2020 session without approving fee rules, and temporary fee rules became effective on March 20, 2020 (*sine die*). These rules are in effect until the end of the 2021 legislative session.

Further, the Idaho Department of Lands (Department) undertook negotiated rulemaking for IDAPA 20.03.02, Rules Governing Mined Land Reclamation, to implement 2019 amendments to the Idaho Mined Land Reclamation Act¹ (Title 47, Chapter 15, Idaho Code). Negotiated rulemaking to formulate a proposed rule for IDAPA 20.03.02 concluded in August 2020.

Discussion

An omnibus Notice of Proposed Rulemaking was published in a special edition of the Idaho Administrative Bulletin on September 16, 2020. Except for IDAPA 20.03.02, the proposed fee rules under IDAPA 20, Rules of the Idaho Department of Lands, were re-published as previously submitted to and reviewed by the Idaho Legislature. The proposed rule text for IDAPA 20.03.02, Rules Governing Mined Land Reclamation included changes negotiated with stakeholders at multiple public meetings through the negotiated rulemaking process in 2019 and 2020.

The proposed fee rules were open for written public comment from September 16 through October 7, 2020, and a public hearing was held on September 30, 2020. Three people offered remarks on IDAPA 20.03.02 during the hearing; no other rules received remarks.

¹ Prior to July 1, 2019 known as Idaho Surface Mining Act

Seven written comments were received on IDAPA 20.03.02; no other rules received comments.

A summary of oral and written comments is included as Attachment 1. Several edits were made to the proposed rule based on the comments received (Attachment 2). A number of other edits were made in compliance with Executive Order 2020-01.

If approved by the Land Board and other approving authorities, the Department will submit the Notice of Omnibus Rulemaking – Adoption of Pending Fee Rule (Attachment 3) for review by the 2021 Idaho Legislature. The rulemaking notice includes rules of the Idaho Oil and Gas Conservation Commission and Idaho Board of Scaling Practices because those rules are listed in IDAPA 20, Rules of the Idaho Department of Lands. However, the Department is not asking the Land Board to adopt rules under authority of those boards.

Recommendation

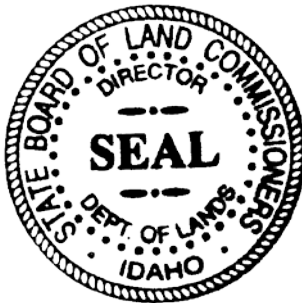
Adopt the Department's proposed fee rules including the amended IDAPA 20.03.02, Rules Governing Mined Land Reclamation as pending fee rules and approve the Department's Notice of Omnibus Rulemaking – Adoption of Pending Fee Rule.

Board Action

A motion was made by Attorney General Wasden that the Land Board adopt and approve the Department's recommendation that is adopt the Department's proposed fee rules including the amended IDAPA 20.03.02, Rules Governing Mined Land Reclamation, as pending fee rules and approve the Department's Notice of Omnibus Rulemaking – Adoption of Pending Fee Rule. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

Attachments

1. Summary of Comments Received on Proposed Rules
2. Pending Rule Text for IDAPA 20.03.02 (Changes to Proposed Rule)
3. Draft Notice of Omnibus Rulemaking – Adoption of Pending Fee Rule



Response to Comments on Proposed Rule IDAPA 20.03.02, Rules Governing Mined Land Reclamation

Docket No. 20-0000-2000F (Fee Rule)

Comment	Commenter	Rule Section	IDL Response
Definitions of Material Modification, Pollutant, and Treatment were changed in IDAPA 58.01.13, so the definitions in IDL's rule should be changed.	Mary Anne Nelson, DEQ	010.10, 17, and 25	Changes made.
A reference to applicable surface and ground water quality standards is needed.	Mary Anne Nelson, DEQ	140.09	Changes made.
Exempt an individual and small operator that operates in compliance with 060.03-08.	Alan Gilda	001.05.b	No statutory authority exists for this exemption. While IDL understands the concerns stated, IDL has not required a reclamation plan for operations as described in the comment. No definition is proposed for "individual and small operator," and several permitted operators may claim the same status.
IDL's proposal to classify hobby mines as exploration is not a legal solution.	Alan Gilda	68.01	Hardrock mines should be reporting production to the Idaho Tax Commission as required by Title 47, Chapter 12, Idaho Code. In the admitted absence of such reporting, and the admitted hobby nature of the activity in question, IDL stands by the classification of the activity as exploration. Reclamation is still required, but no application fee or financial assurance is required.
Change the fees to a per-acre fee within the 0-100, >100-1,000, +1,000 acre categories.	Alan Gilda	68.01	Size of an operation is one factor in the level of effort required to review a reclamation plan. Complexity is another factor that may or may not be related to the number of acres at a mine. An underground mine may have a small footprint, but potentially acid generating waste rock and adit discharge may require more effort for IDL to review and would not be captured in an acres-only fee schedule.

Comment	Commenter	Rule Section	IDL Response
The proposed fees do not follow Executive Order 2020-01 due to the impact on the small miner.	Alan Gilda	68.01	The fees are appropriate for businesses. Executive Order 2020-01 appears to be targeted toward the impact on businesses, and not hobbies. The Proposed Rule is shorter than the prior rules even with the additions required by HB 141.
The new proposed rules state "These rules apply to all exploration, mining operations, and permanent closure of cyanidation facilities on all lands in the state, regardless of ownership." This will now require the small miner to submit a reclamation plan whereas previously they did not.	Alan Gilda	001.05	This language is unchanged from the language in Subsection 001.05 prior to the passage of HB 141. For the described activities, nothing has materially changed in statute or rule.
Add an additional exemption: v. A small mine operation conducted in accordance with Section 060.	Alan Gilda	001.05.b	A mine cannot both be exempt from the rules and follow Section 060. Also, no definition is proposed for "small mine operation," and several permitted operators may claim the same status.
Modify as follows: "Any operator desiring to conduct exploration or a small mine operation using motorized earth-moving equipment....shall notify the Department..."	Alan Gilda	060.03	No definition is proposed for "small mine operation," and several permitted operators may claim the same status. Also, the described activity was hand work. Any mining using motorized earth-moving equipment should be required to submit a reclamation plan and provide financial assurance.
As per prior comments, the denial of a time extension request under Subsection 03 should also be appealable.	Bradley Kucera, Thompson Creek Mining Company	120.22	The rulemaking record does not reflect a prior request for this change. Change was made.
Reasonable cause is a subjective metric.	Bradley Kucera, Thompson Creek Mining Company	120.03	Reasonable cause is a commonly used legal phrase. It relies on facts and circumstances specific to the issue at hand. Listing all of the possible facts and circumstances that would support an extension is not feasible in a rule and risks omitting other facts and circumstances that could also be relevant. Reasonable cause gives an operator flexibility in presenting their request for extension. The agency decision, however, must be based on the specific facts and circumstances regarding the request or it will get overturned if subjected to judicial review.

Comment	Commenter	Rule Section	IDL Response
The duration of SWPPP, IPDES permit, ground water point of compliance, and other permits or approvals may not capture the information required by 069.05.a. This may not ensure that up to date information is being used to assess potential water quality impacts.	Austin Walkins, Idaho Conservation League	070.04.c	If water quality predictions made at the start of a project do not match reality during the life of the operation, then IDL can declare a material change as defined in Subsection 010.09 and require the operator to amend their plan for both operations and post-closure. Monitoring data as per Subsection 070.06 can be used to help determine if conditions have changed or adjustments are needed. The SWPPP, IPDES, and other permits can also be modified as needed through the life of a project. Coordination with DEQ and other agencies during plan reviews and ongoing oversight will ensure that water quality standards are being met.
Change "may" to "shall" in the first sentence.	Austin Walkins, Idaho Conservation League	155.01	The Department needs the flexibility provided by the word "may." Idaho Code § 47-1508(e) requires the board to review reclamation plans at least once every five (5) years. In order to help accomplish this review the rule allows the Department to require operators to submit an update on their mining operation. The majority of reclamation plans are gravel pits with a low potential for water quality issues and may not need the operator's update to accomplish the review required by Idaho Code § 47-1508(e). This is especially true for reclamation plans held by public road agencies that are exempt from financial assurance under Idaho Code § 47-1519.
Reference to Executive Order 88-23 and subsequent language is outdated and unnecessary.	Ben Davenport, Idaho Mining Association	001.02	Reference removed.
Strike the 1997 date as it is obsolete and confusing. This should instead mirror the language in Idaho Code § 42-1512(h) and 42-1518(d).	Ben Davenport, Idaho Mining Association	001.05.a	Removing the 1997 date may require plans approved before that date to submit additional information. With the legislative lapse in rules, this paragraph is reworded to more clearly express the intent. Subsections 120.05 and 120.07 address Idaho Code § 47-1512(h). Section 200 addresses the language in Idaho Code § 47-1518(d).

Comment	Commenter	Rule Section	IDL Response
Change b to "Substantially modifies surface water management or a water management plan in a way that significantly increases the potential to cause degradation of waters of the state."	Ben Davenport, Idaho Mining Association	010.09.b	The proposed change removes the exemption of "routine implementation and maintenance of BMPs" and was not discussed during the negotiated rulemaking. Also, if a change is significant enough that IDL needs an interagency review, then it should be a material change regardless of whether or not it increases the potential to cause degradation. Until IDL receives assistance from DEQ and other agencies, the potential impact on waters of the state may not be known.
Definition should only apply to cyanidation facilities permitted prior to July 1, 2005 as stated in Idaho Code § 47-1518(b).	Ben Davenport, Idaho Mining Association	010.10	010.10.b addresses this issue of applicability, as does 001.05.e.
This subparagraph should be stricken because significant change is not defined and is not associated with potential water quality impacts or increased closure costs.	Ben Davenport, Idaho Mining Association	010.10.a.ii	Definition changed to match the definition in IDAPA 58.01.13.007.12 that was published in Docket 58-0000-2000F.
Phased operation language similar to that used in Section 069 is needed in Section 070 to reduce confusion on this point.	Ben Davenport, Idaho Mining Association	070	Two references in Section 070 already address this. First, 070.02.a requires all information submitted under Section 069 to also be submitted under Section 070. Subparagraph 069.05.i of the reclamation plan requirements states "If construction, mining, or reclamation will be completed in phases, a description of the tasks to be completed in each phase, an estimated schedule, and proposed adjustments of financial assurance related to each phase." Also, and in response to prior requests by rulemaking participants, Subsection 070.04 states "Reclamation plans must include all of the information required under Subsection 069.05, including but not limited to phases as described in Subsection 069.05.i, and the following additional information:...".

Comment	Commenter	Rule Section	IDL Response
It is unclear what the term "process fluid ponds" means and what is intended by the use of the term.	Ben Davenport, Idaho Mining Association	070.03 and 05	"Process fluid ponds" refer to any ponds that contain fluids used to process ore at a mine site. The size and contents of these ponds need to be disclosed due to the impact on financial assurance and post closure planning. They are part of the "affected land" defined in Idaho Code § 47-1503(5). IDL placed these in Section 070 so applicants will understand that information on these facilities, if present at the mine site, needs to be included in the reclamation plan.
A geotech analysis report should not be required if this analysis has already been undertaken or evaluated by another agency such as a federal agency under NEPA.	Ben Davenport, Idaho Mining Association	070.04	IDL agrees, and continues to accept reports that have been developed through the NEPA process. "Prepare" changed to "provide" in the first sentence to make this more clear. A similar requirement for geotech reports has been in place since 1998. This is accomplished through the interagency review process IDL has participated in for over 30 years. As IDL has communicated multiple times during rulemaking, an operator on federally administered lands is asked to develop one plan that satisfies the requirements of all state and federal agencies.
This section still leaves the potential for IDL to require the collection of additional data beyond DEQ requirements.	Ben Davenport, Idaho Mining Association	070.06	A potential monitoring requirement has been in the rules since 1989. IDL is not aware of any situation when IDL has required monitoring data and an operator has objected. As currently proposed in the rule, "This will not require any additional monitoring data where such data is already provided under an IPDES permit, SWPPP, ground water point of compliance, or other federal or state requirements for collecting surface or ground water data." If an operator is proposing a mine with no surface discharge and no predicted impacts to ground water, then no DEQ permitting requirements exist. A mine operator who proposes to land apply waste water is also exempt from permitting through DEQ under IDAPA 58.01.17.100.02.a. Monitoring requirements from IDL in these situations may be the only way to verify that an operator's predictions are accurate and no impacts to water quality are occurring.

Comment	Commenter	Rule Section	IDL Response
Only IDL should be responsible for a determination that post closure is complete for a cyanidation facility.	Ben Davenport, Idaho Mining Association	111.02	This is not supported by existing statute and rule. Idaho Code § 47-1506(h) states in part "The board shall coordinate its review of activities in a reclamation plan, operating plan, and permanent closure plan under statutory responsibility of the department of environmental quality with that department, ...". IDAPA 58.01.13.100.03.t requires the post closure plan submitted to DEQ to be the exact same as that submitted to IDL. IDAPA 58.01.13.500.11 requires the permanent closure plan as approved by IDL to be incorporated by reference into the DEQ permit. IDAPA 58.01.13.501.02 requires the permanent closure report to be submitted to DEQ for review and approval, and describes a joint review by DEQ and IDL. IDAPA 58.01.13.502.02 requires a coordinated evaluation of the permanent closure report with IDL.
Only a material change should be cause for amending a permanent closure plan as stated in Idaho Code § 47-1508(f). Material modification only applies to that portion of a facility with an existing permit prior to July 1, 2005. As we are not aware of any operating cyanidation facility in Idaho, it is not necessary to include the reference to "material modification" in this section. Also we would recommend striking 01.b as that should be adequately covered by reference to "material change."	Ben Davenport, Idaho Mining Association	091.01	Material modification could be applied to any cyanidation closure plan that is issued in the future; it is not restricted to facilities with existing permits. See IDAPA 20.03.02.010.09. An amendment caused by a material change is covered by Idaho Code § 47-1508(a). The last sentence in 091.01 states "Circumstances that could require a permanent closure plan to be amended include:". The use of the word "could" is intentional. Not all material modifications may result in a need for a plan amendment. It is likely, however, that a material change will require a plan amendment.
Appeal process for financial assurance extension requests should be added here.	Ben Davenport, Idaho Mining Association	120.22	Added to the Subsection.

Comment	Commenter	Rule Section	IDL Response
Unclear what disbursements from the trust mean.	Ben Davenport, Idaho Mining Association	122.05.f	Disbursements include payments to the trustee or any other payment of funds not related to financial assurance release. Sentence added to provide more explanation. In the event of bankruptcy or other unforeseen circumstances during the post-closure period, payments to third parties may be needed. The post-closure period may last 30 years or longer, so it is not unreasonable that unforeseen costs related to management of the trust may occur. As with other forms of financial assurance, IDL needs to review and approve this reduction in the financial assurance due to the requested disbursement. Similar language is found in BLM Handbook H3809-1 Section 6.3.4.4, New Mexico 19.10.12.1208.E(2)(h), Pennsylvania PAC 86.158(f)(2)(iv), and 40 CFR 264.143(a)(10). Financial assurance release is handled as described in Section 120.
Language change suggested as follows "When used to cover post closure costs, including long-term water management, a payment schedule will be created in the memorandum of agreement. The trust fund must be initially funded in an amount to cover the liability for the first five (5) years of post-closure. Annual payments into the trust will increase incrementally with the addition of post closure liability through the post closure period."	Ben Davenport, Idaho Mining Association	122.05.e.iii	The proposed language only funds the first five years of post closure. Water treatment, if required, will likely last at least thirty years, if not longer. An operator that goes bankrupt before post closure or in that first five years will leave the taxpayers with at least 25 years of unfunded liability. Also, the proposed language departs from the RCRA concept of a "pay in period" that fully funds the closure cost by the time the closure period is reached. This subparagraph was modified from BLM Handbook H3809-1 Section 6.3.4.6 (page 6-37). The expected earnings from the trust fund during post-closure, however, are not explicitly accounted for. Language modified to ensure the expected earnings are included in the amount needed. This should reduce the initial amount needed.
Idaho Code § 47-704 9(f) protects resource estimates from disclosure, and this rule should do the same.	Wendy Miller, Keceph Mountain LLC	180.03	IDAPA 20.03.02 derives its authority from Title 47, Chapter 15, Idaho Code, the Mined Land Reclamation Act. Title 47, Chapter 7, Idaho Code, Mineral Rights on State Lands, has no impact on this rule. Title 74, Chapter 1, Idaho Code, the Public Records Act, has one or more exemptions related to resource estimates. IDL's public records policy complies with the Public Records Act.

Comment	Commenter	Rule Section	IDL Response
These rules result in significant permitting delays for mining companies in Idaho.	Wendy Miller, Keceph Mountain LLC	Executive Order 2020.01	As IDL has communicated multiple times during rulemaking, an operator on federally administered lands is asked to develop one plan that satisfies the requirements of all state and federal agencies. This is accomplished through the interagency review process IDL has participated in for over 30 years. The federal permitting process drives the timeframe, not the state permitting process. IDL participates in the Federal NEPA process used to review projects on BLM and USFS lands even before IDL receives an application from an operator. IDL's interagency review process saves an operator time by consolidating several permitting actions into one. IDL's participation in this process has improved these federal reviews several times by steering decisions to a more sensible outcome also favored by the mining company.
Definitions of Operating Plan and Reclamation Plan are almost identical.	Wendy Miller, Keceph Mountain LLC	010.14 and 21	IDL is working within the authorities given in Idaho Code § 47-1506(a) and (b).
IDL is giving itself authority over federal lands.	Wendy Miller, Keceph Mountain LLC	001.05	IDL is given this authority in Idaho Code § 47-1501(a): "It is the purpose of this chapter to provide for the protection of the public health, safety and welfare through measures to reclaim <u>the surface of all the lands within the state disturbed by exploration and surface and underground mining operations</u> and measures to assure the proper closure of cyanidation facilities and thereby conserve natural resources, aid in the protection of wildlife, domestic animals, and aquatic resources, and reduce soil erosion." <i>Emphasis added.</i> The legality of IDL's mining regulatory authority on federal lands is affirmed by the Idaho Supreme Court in <u>State ex rel. Andrus v. Click</u> , 97 Idaho 791, 554 P.2d 969 (1976).

Comment	Commenter	Rule Section	IDL Response
The definition of Operating Plan exceeds the authority given in Idaho Code § 47-1506(b).	Wendy Miller, Keceph Mountain LLC	010.14	The intent of the definition is to distinguish it from the rest of the information required in a reclamation plan. The definition itself is not a requirement. The requirement for an operating plan is in 070.02.c, and it only requires an operating plan if it is required by Idaho Code § 47-1506(b). As stated in Idaho Code § 47-1506(b)(2), IDL can promulgate rules or guidelines to allow the content of a nonfederal operating plan to be determined based upon the type and size of the mining operation.
Mining operations on federal lands require a document called by some federal agencies a "Plan of Operation" (POO) or something similar. Contained within the POO is a section on the mining plan, a section on the environment, and a section on reclamation. It was from that understanding, the Legislature exempted "operating plans" for mines on federal lands. But, since the department later went with different nomenclature/definitions, they divided the mine permit into an "Operating Plan" and a "Reclamation Plan."	Wendy Miller, Keceph Mountain LLC	010.14 and 21	IDL is working within the authorities given in Idaho Code § 47-1506(a) and (b). Operating plans were added to the statute in 1997 by the legislature. IDL did not create the nomenclature that differs from that used by federal agencies. IDL has not reviewed the legislative intent from the 1997 statute change, and it was not part of the rulemaking record.
With duplicative permitting requirements, IDL is not only hurting others but is hurting itself. The reason is mining companies can't mine until the permitting process is approved, and IDL gets royalties from mining companies producing minerals.	Wendy Miller, Keceph Mountain LLC	General	IDL only collects royalties from minerals removed from state-owned lands. This includes mostly sand and gravel and some phosphate, and only represents a small part of overall mineral production in Idaho. No hard rock mines on state lands have paid royalties in over 25 years.
The difference in terminology for operating and reclamation plans between the federal agencies and IDL is confusing. While it would help for mining law to be updated, IDL can do a lot to help fix these encumbrances in 20.03.02 right now without changing the law.	Wendy Miller, Keceph Mountain LLC	Reclamation Plan and Operating Plan	This rulemaking was undertaken due to the 2019 update to Idaho Code § 47-15 <i>et seq</i> . Changes to the reclamation plan and operating plan terminology would have to first come through legislation to change Idaho Code § 47-15 <i>et seq</i> . The rules cannot override or conflict with statute.
This section exceeds IDL statutory authority by stating that a fee can be charged for third party plan reviews.	Wendy Miller, Keceph Mountain LLC	001	This error in the rules goes back to 2006, and will be fixed in the Pending rule.

Comment	Commenter	Rule Section	IDL Response
If an out-of-state company proposes a mine and they have their own professional engineer already on staff, they still have to hire an Idaho personal engineer? More importantly, where is the "MUST" be an Idaho licensed professional engineer required in Title 47, Chapter 15? This is added expense and red-tape instead of reducing the regulatory burden.	Wendy Miller, Keceph Mountain LLC	070.04.f	This is required by Idaho Code § 54-1201 <i>et seq</i> . It is a common practice to ensure that structures are adequately designed to protect the health and safety of Idahoans. Engineers, like many licensed professionals, are often licensed in multiple states, or states have adopted reciprocity with other states for licensing requirements.
Review by Idaho Departments of Fish and Game and Water Resources are not authorized by statute and may add additional permitting requirements.	Wendy Miller, Keceph Mountain LLC	080.02	This state agency review process has been in the rules since 1989. This does not add more permitting requirements, rather it lets the operator and other agencies know up front what is being proposed and what other state requirements may be. In the absence of this interagency review, an operator could start operations without obtaining a needed stream channel alteration permit or dam safety permit from IDWR. This could lead to a violation from IDWR and a stop work order. The rules have a more proactive approach to allow these needs to be revealed early on in the permitting process. IDL staff often suggest that potential applicants may need to contact one or more other agencies for additional permitting requirements as part of the interagency review process. Mines reviewed under Section 070 always receive interagency review because of the high likelihood that other permits will be needed.
Section 120 is Financial Insurance Requirements of the state and lists 22 subpoints. Is IDL confusing/mixing Federal and state oversight on federal lands?	Wendy Miller, Keceph Mountain LLC	120.14	IDL and the federal agencies have recognized each other's bonds for over 30 years. IDL is not aware of any instance where an operator was required to submit duplicate bonding.

Comment	Commenter	Rule Section	IDL Response
Why doesn't Idaho provide an option for the individuals and small operators? The expensive permitting process discourages small miners.	Wendy Miller, Keceph Mountain LLC	General	Activities classified as exploration do not require reclamation plans. Underground mines, even small ones, often have complex waste rock or mine drainage issues associated with them. Abandoned mines across the state that were excavated prior to mining regulations offer an example of the possible consequences of unregulated mining. Hundreds of abandoned mines leach contaminants into ground and surface waters that are used for agriculture and consumption. Hundreds of unsecured abandoned mine openings threaten the health and safety of Idaho's residents and visitors. Mining is a capital intensive business. The permitting costs are generally small compared to the initial capital costs, ongoing extraction costs, and reclamation costs.
These proposed rules in 20.03.02 and excessive costs for small businesses are suddenly being dumped on the small underground mining operations because before underground mines were not regulated so extreme. The additional regulation adds to the confusion.	Wendy Miller, Keceph Mountain LLC	General	IDL has processed and approved one reclamation plan for a small underground mine since the Temporary Rule was first adopted in 2019. No other applications for an underground mine have been received. The rules do not impact activities that IDL classifies as exploration, including underground exploration. Mining is a capital intensive business. The permitting costs are generally small compared to the initial capital costs, ongoing extraction costs, and reclamation costs. These costs generally require that underground mines be operated as a business, and not a hobby.
IDL has mentioned to conduct exploration first. While exploration does precede mining, if the permitting process is so complex, costly, tedious, and excessive for a small business to mine, why invest any money into doing exploration in Idaho?	Wendy Miller, Keceph Mountain LLC	General	Many companies are investing in exploration in Idaho. See https://www.mining-journal.com/gold-and-silver-news/news/1394963/gold-explorers-shining-in-idaho "Up until five years ago, the Idaho Mining Association (IMA) was primarily focused on operators, but with the new growth in gold exploration and other critical minerals we have seen substantial growth in the exploration and developmen+D47t side of our membership. We have increased from four or five exploration companies to 10-to-15. Word has gotten out that have great geological resources, friendly state policy makers and that the jurisdiction is good," association president Ben Davenport told Mining Journal.

Comment	Commenter	Rule Section	IDL Response
Is the permitting so unpredictable and complicated that a pre-meeting is needed to discuss anticipated application requirements and application procedures? Shouldn't the new rulemaking effort produce a regulatory process that is more straight forward for all and in light of Executive Order 20202-01, reduce the overall regulatory burden, or at a minimum remain neutral, as compared to the previous rule?	Wendy Miller, Keceph Mountain LLC	071.03	IDL must coordinate the review and approval of cyanidation closure plans with DEQ as required by statute and IDAPA 58.01.13. The purpose of the pre-application meeting is to reduce the overall time needed for application processing. Without IDL's assistance at a pre-application meeting, the applicant may miss some required information in their application and IDL would have to determine the application is incomplete. The incomplete application is then returned for revision. This process may repeat until the application is complete. Proper closing of a cyanidation facility is not a simple task, and IDL needs to ensure that the operator understands the requirements before they submit the closure plan for review.
In the last 8 years, non-fuel mineral production (phosphate, aggregate, industrial minerals, silver, gold, lead, zinc, copper, etc.) went from 2011 highest at \$1.4 Billion but has declined to just under \$600 million in 2018. IDL should do its part in helping all companies mine minerals for Idaho by reducing unnecessary, excessive, burdensome regulations instead of heaping more on them which can especially lead to driving small mining businesses out of the state.	Wendy Miller, Keceph Mountain LLC	General	Commodity prices in 2011 were much higher than they were in 2018. Aside from aggregate and perhaps a few industrial minerals, the listed commodities have an international market. Commodity prices are the most important variable for a mine operator. At a given grade of ore, price is what separates ore from waste. The State of Idaho has no influence on the prices of international commodities. For over 30 years IDL has instituted the Joint Review Process with other state and federal agencies to allow an operator to streamline the permitting process as much as possible. Improvements can always be made, but IDL firmly believes that state agencies should be at the table for permitting decisions on federal lands. The participation of IDL in the interagency review and administration of mine sites has helped federal land managers to make better resource and fact-based decisions in spite of pressure from other federal agencies or non-governmental organizations to make non-fact based decisions. The State of Idaho believes it can make decisions at least as good as, if not better than, the federal government because our decision makers are closer to the issues than Washington D.C.

20.03.02 – RULES GOVERNING MINED LAND RECLAMATION

000. LEGAL AUTHORITY.

Title 47, Chapter 15 (“chapter”), Idaho Code, authorizes the Board to promulgate rules pertaining to mineral exploration; mining operations; reclamation of lands affected by exploration and mining operations, including review and approval of reclamation and permanent closure plans; requirements for financial assurance for reclamation and permanent closure, and to establish a reasonable fee for reviewing and approving reclamation plans and permanent closure plans, including the reasonable cost to employ a qualified independent party, acceptable to the applicant and the Board, to ~~review reclamation plans and permanent closure plans and to~~ verify the accuracy of cost estimates ~~for reclamation plans and permanent closure plans~~. The Board has delegated to the director of the Department the duties and powers under the chapter and these rules, however the Board retains responsibility for administrative review.

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001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 20.03.02, “Rules Governing Mined Land Reclamation,” IDAPA 20, Title 03, Chapter 02.

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~~**02. Purpose.** These rules are intended to provide for the protection of public health, safety, and welfare, by ensuring that all the lands within the state disturbed by exploration and mining operations are properly reclaimed and ensuring the proper permanent closure of cyanidation facilities and thereby conserve natural resources; aid in the protection of wildlife, domestic animals, and aquatic resources; and reduce soil erosion. It is also the purpose of these rules to implement the State of Idaho’s antidegradation policy as set forth in Executive Order No. 88-23 as it pertains to exploration and mining operations and cyanidation facilities operating in the state. These rules are not intended to require reclamation or permanent closure activities in addition to those required by the chapter.~~

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032. Scope. These rules establish the notification requirements for exploration and the application, operation, and reclamation requirements for mined lands. In addition, they establish the application and closure requirements for cyanidation facilities. These rules also establish the reclamation and financial assurance requirements for all these activities, and describe the processes used to administer the rules in an orderly and predictable manner.

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043. Other Laws. Operators engaged in exploration, mine operation, and operation of a cyanidation facility shall comply with all applicable laws and rules of the state of Idaho including, but not limited to the following:

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a. Idaho water quality standards established in Title 39, Chapters 1 and 36, Idaho Code; IDAPA 58.01.02, “Water Quality Standards”; and IDAPA 58.01.11, “Ground Water Quality Rule,” administered by the Department of Environmental Quality (DEQ).

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b. Requirements and procedures for hazardous and solid waste management, as established in Title 39, Chapter 44, Idaho Code, and rules promulgated thereunder including, IDAPA 58.01.05, “Rules and Standards for Hazardous Waste” and IDAPA 58.01.06, “Solid Waste Management Rules,” administered by the DEQ.

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c. Section 39-118A, Idaho Code, and applicable rules for ore processing by cyanidation as promulgated and administered by the DEQ as defined in IDAPA 58.01.13, “Rules for Ore Processing by Cyanidation.”

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d. Section 39-175, Idaho Code, and applicable rules for the discharge of pollutants to waters of the United States as promulgated and administered by DEQ in IDAPA 58.01.25, “Rules Regulating the Idaho Pollutant Discharge Elimination System Program.”

()

e. Idaho Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code, and applicable rules as promulgated and administered by the Idaho Department of Water Resources. ()

f. Idaho Dam Safety Act, Sections 42-1710 through 42-1721, Idaho Code, and applicable rules promulgated and administered by the Idaho Department of Water Resources. ()

054. **Applicability.** These rules are to be read and applied in conjunction with the chapter. These rules apply to all exploration, mining operations, and permanent closure of cyanidation facilities on all lands in the state, regardless of ownership. ()

a. These rules apply to mining operations or exploration operations commenced after ~~the effective date of these rules~~ **January 1, 1997**. These rules in no way affect, alter, or modify the terms or conditions of any approved reclamation plan, reclamation plan amendment, or financial assurance for reclamation obtained prior to January 1, 1997. If a material change arises and is regulated in accordance with Subsection 090.01, then the operator shall submit a reclamation plan amendment. ()

b. These rules do not apply to: ()

i. Any surface mining operations performed prior to May 31, 1972. An operator will not be required to perform reclamation activities on any pit or overburden pile as it existed prior to May 31, 1972. ()

ii. Mining operations for which the Idaho Dredge and Placer Mining Protection Act requires a permit, or which are otherwise regulated by that act. ()

iii. Extraction of minerals from within the right-of-way of a public highway by a public or governmental agency for maintenance, repair or construction of a public highway, provided the affected land is an integral part of such highway. ()

iv. Underground mines that existed prior to July 1, 2019, and have not expanded their surface disturbance by 50% or more after that date. ()

c. Sand and gravel mining operations in state-owned beds of navigable lakes, rivers or streams shall constitute an approved mining plan for the purpose of these rules if the operator has all of the following: ()

i. A valid riverbed mineral lease granted by the Board in accordance with IDAPA 20.03.05, "Rules Governing Riverbed Mineral Leasing", with a valid mineral lease bond; ()

ii. An approved plan of operations for the riverbed mineral lease; and ()

iii. A valid stream channel alteration permit issued by the Idaho Department of Water Resources. ()

d. Surface mining operations, conducted by a public or governmental agency for maintenance, repair, or construction of a public highway, which: ()

i. Disturb more than two (2) acres will comply with the provisions of Section 069; or ()

ii. Disturb less than two (2) acres will comply with Subsections 060.06.a. through 060.06.e. ()

e. A cyanidation facility with a permit approved by the DEQ prior to July 1, 2005, ~~shall be~~ **is** subject to the applicable laws and rules for ore processing by cyanidation in effect on June 30, 2005; however, if there is a material modification or material expansion to a cyanidation facility after July 1, 2005, these rules shall apply to the modification or expansion. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

In addition to the definitions set forth in the chapter, the following definitions apply to these rules: ()

01. Adit. A nearly horizontal passage from the surface into an underground mine. ()

02. Approximate Previous Contour. A contour that is reasonably comparable to that contour existing prior to disturbance, or that blends with the adjacent topography. ()

03. Best Management Practices (BMP). Practices, techniques or measures developed or identified by the designated agency and identified in the state water quality management plan which are determined to be a cost-effective and practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality goals. ()

04. Chapter. The Mined Land Reclamation Act, Title 47, Chapter 15, Idaho Code. ()

05. Department. The Idaho Department of Lands. ()

06. Discharge. With regard to cyanidation facilities, when used without qualification, any spilling, leaking, emitting, escaping, leaching, or disposing of a pollutant into the waters of the state. ()

07. Ground Water. Any water of the state that occurs beneath the surface of the earth in a saturated geological formation of rock or soil. ()

08. Land Application. A process or activity involving application of liquids or slurries potentially containing cyanide from the cyanidation facility to the land surface for the purpose of treatment, neutralization, disposal, or groundwater recharge. ()

09. Material Change. A change that deviates from the approved reclamation plan or permanent closure plan and causes one (1) or more of the following to occur: ()

a. Results in a substantial adverse effect to the geotechnical stability of overburden disposal areas, topsoil, stockpiles, roads, embankments, tailings facilities, cyanidation facilities or pit walls; ()

b. Substantially modifies surface water management or a water management plan, not to include routine implementation and maintenance of BMPs; ()

c. Exceeds the permitted acreage; or ()

d. Increases overall estimated reclamation costs by more than fifteen percent (15%). ()

10. Material Modification or Material Expansion. With regard to cyanidation facilities: ()

a. Any change to a permitted cyanidation facility ~~with an existing permit~~, except as provided in Subsection 010.10.b, that the Department determines will ~~cause any of the following~~: ()

~~i. The addition of a new cyanidation process, or cyanidation facility component, or a significant change in the capacity of an existing cyanidation facility component, that is not authorized by the existing permit and significantly increases the potential to cause degradation of waters of the state; or~~ ()

~~ii. A significant change in the location of a cyanidation process, cyanidation facility component or site condition that is not adequately described in the original application; or~~ ()

~~iii. A change in the cyanidation process that alters the characteristics of the waste stream in a way that significantly increases the potential to cause degradation of waters of the state.~~ ()

i. Cause or increase the potential to cause degradation of waters, such as a new cyanidation process or cyanidation facility component; or ()

ii. Change the capacity, location, or process of an existing cyanidation facility component; or ()

iii. Change the site condition in a manner that is not adequately described in the original permit application. ()

b. Reclamation and closure related activities at a cyanidation facility with an existing permit that did not actively add cyanide after January 1, 2005 ~~is~~are not ~~be considered to be~~ material modifications or material expansions of the cyanidation facility. ()

11. Material Stabilization. Managing or treating spent ore, tailings, other solids and/or sludges resulting from the cyanidation process to minimize waters or all other applied solutions from migrating through the material and transporting pollutants associated with the cyanidation facility to ensure that all discharges comply with all applicable standards and criteria. ()

12. Motorized Earth-Moving Equipment. Backhoes, bulldozers, front-loaders, trenchers, core drills, and other similar equipment. ()

13. Neutralization. Treatment of process waters such that discharge or final disposal of those waters does not, or will not, violate any applicable standards and criteria. ()

14. Operating Plan. A plan that describes how a mining operation will be constructed and operated to avoid or minimize surface disturbance and potential impacts to waters of the state, and to prepare for final reclamation. ()

15. Permanent Closure. Those activities that result in neutralization, material stabilization, and decontamination of cyanidation facilities or the facilities' final reclamation. ()

16. Permit. When used without qualification, any written authorization, license, or equivalent control document issued by the DEQ. This includes authorizations issued pursuant to the application, public participation, and appeal procedures in IDAPA 58.01.13, "Rules for Ore Processing by Cyanidation," and those issued pursuant to the application, public participation, and appeal procedures in IDAPA 58.01.25. ()

17. Pollutant. Chemicals, chemical waste, process water, biological materials, radioactive materials, or other materials that, when discharged, cause or contribute ~~to water pollution,~~ adverse effects to any beneficial use or may otherwise for any other reason may impact waters of the state. ()

18. Process Waters. Any liquids intentionally or unintentionally introduced into any portion of the cyanidation process. These liquids may contain cyanide or other minerals, meteoric water, ground or surface water, elements and compounds added to the process solutions for leaching or the general beneficiation of ore, or hazardous materials that result from the combination of these materials. ()

19. Real Property. Land and appurtenances as defined in Section 55-101, Idaho Code. ()

20. Reclamation. The process of restoring an area affected by a mining operation or cyanidation facility to its original or another beneficial use, considering previous uses, possible future uses, and surrounding topography. The objective is to re-establish a diverse, self-perpetuating plant community, and to minimize erosion, remove hazards, and maintain water quality. ()

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 land is accomplished. ()

22. Revegetation. The establishment of the premining vegetation or a comparable vegetative cover on

the land disturbed by mining operations. ()

23. Shaft. A vertical or inclined passage from the surface into an underground mine. ()

24. Surface Waters. The surface waters of the state of Idaho. ()

25. Treatment. Any method, technique or process, including neutralization, designed to that changes the physical, chemical, or biological character or composition of a waste for the purpose of disposal, or the end result of such action. ()

26. Water Balance. An inventory and accounting process capable of being reconciled that integrates all potential sources of water that are entrained in the cyanidation facility or may enter into or exit from the cyanidation facility. The inventory must include the water holding capacity of specific structures within the facility that contain process water. The water balance is used to ensure that all process water and other pollutants can be contained as engineered and designed within a factor of safety as determined in the permanent closure plan. ()

27. Water Management Plan. A document that describes the results of the water balance and the methods that will be used to ensure that pollutants are not discharged from a cyanidation facility into waters of the state, unless permitted or otherwise approved by the DEQ. ()

28. Waters of the State. All the accumulations of water, surface and underground, natural and artificial, public or private, or parts thereof that are wholly or partially within, flow through or border upon the state of Idaho. These waters shall not include municipal or industrial wastewater treatment or storage structures or private reservoirs, the operation of which has no effect on waters of the state. ()

011. ABBREVIATIONS.

01. BMP. Best Management Practices. ()

02. DEQ. Department of Environmental Quality. ()

03. IPDES. Idaho Pollutant Discharge Elimination System. ()

04. SWPPP. Storm Water Pollution Prevention Plan. ()

05. U.S.C. United States Code. ()

012. -- 049. (RESERVED)

050. ADMINISTRATION.

The Department will administer these rules under the direction of the director. ()

051. -- 059. (RESERVED)

060. EXPLORATION OPERATIONS AND REQUIRED RECLAMATION.

01. Diligence. All reclamation activities required to be conducted on exploration sites ~~shall~~ must be performed in a good, workmanlike manner with all reasonable diligence, and as to a given exploration drill hole, road, or trench, within one (1) year after abandonment thereof. ()

02. When Exploration Is Mining. Exploration operations may under some circumstances constitute mining operations as described in Section 47-1503(7), Idaho Code. ()

03. Notification. Any operator desiring to conduct exploration using motorized earth-moving equipment to locate minerals for immediate or ultimate sale shall notify the Department within seven (7) days after beginning exploration operations. No application fee or financial assurance is required for exploration that is not a

mining operation. ()

04. Contents of Notification. The notification shall include: ()

a. The name and address of the operator; ()

b. The legal description of the exploration and its starting and estimated completion date; and ()

c. The anticipated size of the exploration and the general method of operation. ()

05. Confidentiality. Any such notification ~~shall be~~ **is** treated as confidential in accord with Section 180. ()

06. Exploration Reclamation (Less Than Two Acres). Every operator who conducts exploration affecting less than two (2) acres shall: ()

a. Wherever possible, contour the affected lands to their approximate previous contour; and ()

b. Conduct revegetation activities in accordance with Subsection 140.11. Unless otherwise required by a federal agency, one (1) pit or trench on a federal mining claim showing discovery, may be left open pending verification by federal mining examiners. ()

c. Exploration drill holes ~~shall~~ **must** be plugged within thirty (30) days of drilling the holes. Upon request, the director may allow the holes to be temporarily left unplugged for up to a year, ~~but until they are plugged for up to a year,~~ but until they are plugged the holes must be left so as to eliminate hazards to humans and animals. ()

d. Pits or trenches on mining claims showing discovery may be left open pending verification by federal mining examiners but shall not create a hazard to humans or animals. Such abandoned pits and trenches ~~shall~~ **must** be reclaimed within one (1) year of verification. ()

e. If water runoff from exploration causes siltation of surface waters in amounts more than normally results from runoff, the operator shall reclaim affected lands and adjoining lands under his control as is necessary to meet state water quality standards. ()

07. Exploration Reclamation (More Than Two Acres). Reclamation of lands where exploration has affected more than two (2) acres ~~shall~~ **must** be completed as set forth in Subsection 060.06 and the following additional requirements: ()

a. Abandoned exploration roads ~~shall~~ **must** be cross-ditched as necessary to minimize erosion. The director may request in writing, or may be petitioned in writing, that a given road or road segment be left for a specific purpose and not be cross-ditched or revegetated. If the director approves the petition, the operator cannot thereafter be required to conduct reclamation activities with respect to that given road or road segment. ()

b. Ridges of overburden ~~shall~~ **must** be leveled so as to have a minimum width of ten (10) feet at the top. ()

c. Peaks of overburden ~~shall~~ **must** be leveled so as to have a minimum width of fifteen (15) feet at the top. ()

d. Overburden piles ~~shall~~ **must** be reasonably prepared to control erosion. ()

e. Abandoned lands affected by exploration ~~shall~~ **must** be top-dressed to the extent that such overburden is reasonably available from any pit or other excavation created by the exploration, with that type of overburden that is conducive to the control of erosion or the growth of vegetation that the operator elects to plant

thereon. ()

f. Any water containment structure created in connection with exploration, ~~shall~~ **must** be reasonably prepared so as not to constitute a hazard to humans or animals. ()

08. Additional Reclamation. The operator and the director may agree, in writing, to complete additional reclamation beyond the requirements established in the chapter and these rules. ()

061. -- 067. (RESERVED)

068. APPLICATION FEES

01. Base Application Fees. The following base fee schedule will be used for all reclamation plans and permanent closure plans and amendments to those plans. For plans processed under Section 069 of these rules, this base fee covers up to twenty (20) hours of staff time for review and processing. For plans processed under Section 070 of these rules, the applicant may instead enter an agreement with the Department as described in Subsection 068.03 of these rules. The applicable acreage is based on the proposed reclamation plan area identified in the application:

Type of Plan	Fee (Dollars)
Section 069 of these rules, Reclamation Plan 0 to 5 acres	Five hundred (\$500)
Section 069 of these rules, Reclamation Plan >5 to 40 acres	Six hundred (\$600)
Section 069 of these rules, Reclamation Plan over 40 acres	Seven hundred fifty (\$750)
Section 070 of these rules, Reclamation Plan 0 to 100 acres	One thousand (\$1,000)
Section 070 of these rules, Reclamation Plan >100 to 1,000 acres	One thousand five hundred (\$1,500)
Section 070 of these rules, Reclamation Plan >1,000 acres	Two thousand (\$2,000)
Section 071 of these rules, Permanent Closure Plan	Five thousand (\$5,000)

()

02. Additional Fees for Applications Submitted Under Section 069. Plans processed under Section 069 of these rules that require more than twenty (20) hours of staff time due to an incomplete application will result in additional fees being charged. After a revised application has been received and determined to be complete with the exception of the fee, IDL will send an invoice to the operator at a rate of forty dollars per hour (\$40/hour) for the additional review time over the initial twenty (20) hours. If this additional fee is not paid prior to the sixty (60) day approval deadline, the application will be denied. If the additional fee is paid within 30 days of the denial, the application will be considered complete and the time requirements of Subsection 080.03 will apply. ()

03. Alternative Fee Agreement for Applications Submitted Under Section 070. In lieu of paying a fee at the time the application is submitted, an applicant under Section 070 of these rules may enter into an agreement with the Department for actual costs incurred to process an application, verify a reclamation cost estimate submitted under Idaho Code § 47-1512(c), and issue a final decision. The applicant shall not commence operations until the terms of the agreement have been met, including that the Department has been reimbursed for all actual costs incurred for the permitting process. ()

069. APPLICATION PROCEDURE AND REQUIREMENTS FOR QUARRIES, DECORATIVE STONE, BUILDING STONE, AND AGGREGATE MATERIALS INCLUDING SAND, GRAVEL AND CRUSHED ROCK.

01. Approval Required. Approval of a reclamation plan by the Department is required even if approval of such plan has been or will be obtained from a federal agency. ()

02. No Operator Shall Conduct Mining Operations. No operator shall conduct mining operations on

any lands in the state until the reclamation plan has been approved by the director, and the operator has filed financial assurance that meets the requirements of the chapter and these rules. ()

03. Application Package. The operator must submit a complete application package, for each separate mine or mine panel, before the reclamation plan will be approved. Separate mines are individual, physically disconnected operations. A complete application package consists of: ()

a. An application provided by the director; ()

b. A map or maps of the proposed mining operation which includes the information required under Subsection 069.04; ()

c. A reclamation plan, in map and narrative form, which includes the information required under Subsection 069.05; and ()

d. An out-of-state operator shall designate an in-state agent authorized to act on behalf of the operator. In case of an emergency that requires an action or actions to prevent environmental damage, both the operator and the authorized agent will be notified. ()

e. The correct fee listed in Section 068 of these rules. ()

04. Map Requirements. A vicinity map ~~shall~~**must** be prepared on standard United States Geological Survey ("USGS") seven and one-half (7.5) minute quadrangle maps or equivalent. A map of the proposed mining operation site ~~shall~~**must** be of sufficient scale to show: ()

a. The location of existing roads, access, and main haul roads to be constructed or reconstructed in conjunction with the mining operation and the approximate dates for construction, reconstruction, and abandonment; ()

b. The approximate location and names, if known, of drainages, streams, creeks, or water bodies within one thousand (1,000) feet of the mining operation; ()

c. The approximate boundaries of the lands to be utilized in the mining operations, including a legal description to the quarter-quarter section; ()

d. The approximate boundaries and acreage of the lands that will become affected land as a result of the mining operation during the first year of operations; ()

e. The currently planned storage locations of fuel, equipment maintenance products, wastes, and chemicals that will be utilized in the mining operation; ()

f. The currently planned location and configuration of pits, overburden piles, crusher reject materials, mineral stockpiles, topsoil storage, wash plant ponds and sediment ponds that will be utilized; ()

g. Scaled cross-sections by length and height showing surface profiles prior to mining; and ()

h. A surface and mineral control or ownership map of appropriate scale for boundary identification; ()

05. Reclamation Plan Requirements. Reclamation plans must be submitted in map and narrative form and include the following: ()

a. Where waters of the state 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; ()

- b.** Scaled cross-sections by length and height, showing planned surface profiles and slopes after reclamation; ()
- c.** Roads to be reclaimed; ()
- d.** A plan for revegetation of affected lands including soil types, slopes, precipitation, seed rates, species, handling of topsoil or other growth medium, time of planting, method of planting and, if necessary, fertilizer and mulching rates; ()
- e.** The planned reclamation of wash plant or sediment ponds; ()
- f.** A drainage control map which identifies the location of BMPs that will be implemented to control erosion and water quality impacts during mining and reclamation activities; ()
- g.** The location of any current 100-year floodplain in relation to the mining facilities if the floodplain is within one hundred (100) feet of the facilities, and the BMPs to be implemented that will keep surface waters from entering any pits and potentially changing course. ()
- h.** For operations over five (5) acres, an estimate of total reclamation cost to be used in establishing a financial assurance amount. The cost estimate will include, but is not limited to, the approximate cost of grading, revegetation, equipment mobilization, labor, and other pertinent direct and indirect costs of a third-party to complete reclamation. ()
- i.** If construction, mining, or reclamation will be completed in phases, a description of the tasks to be completed in each phase, an estimated schedule, and proposed adjustments of financial assurance related to each phase. ()

070. APPLICATION PROCEDURE AND REQUIREMENTS FOR OTHER MINING OPERATIONS INCLUDING HARDROCK, UNDERGROUND AND PHOSPHATE MINING.

- 01. Reclamation Plan Approval Required.** Approval of a reclamation plan by the Department is required even if approval of such plan has been or will be obtained from a federal agency. No operator shall conduct mining operations on any lands in the state until the reclamation plan has been approved by the director, and the operator has filed the required financial assurance. ()
- 02. Application Package.** The operator must submit a complete application package for each separate mine or mine panel before the reclamation plan will be approved. Separate mines are individual, physically disconnected operations. A complete application package consists of: ()
 - a.** All items and information required or allowed under Section 069 of these rules; ()
 - b.** Any additional information required by Subsection 070.04; and ()
 - c.** An operating plan, if required by Section 47-1506(b), Idaho Code, prepared in accordance with Subsection 070.05 of these rules. ()

03. Map Requirements. Maps ~~shall~~ **must** be prepared in accordance with Subsection 069.04 of these rules with the addition of any tailings facilities or process fluid ponds. ()

- 04. Reclamation Plan Requirements.** Reclamation plans must include all of the information required under Subsection 069.05, including but not limited to phases as described in Subsection 069.05.i, and the following additional information: ()
 - a.** A description of the planned reclamation of overburden disposal areas, tailings facilities, and sediment ponds; and ()

b. An estimate of total reclamation cost to be used in establishing the financial assurance amount. The cost estimate should include the approximate cost of grading, revegetation, equipment mobilization, labor, and other pertinent costs for third party reclamation. ()

c. To assist in meeting the requirements of paragraph 069.05.a in these rules, a summary of requirements from a SWPPP, IPDES permit, ground water point of compliance, and other permits or approvals or BMPs related to foreseeable water quality impacts on the affected land. ()

d. 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 on the affected land. ()

e. Additional information regarding coarse and durable rock armor if any is proposed to be used for reclamation of mine facilities. The director may, after considering the type, size, and potential environmental impact of the facility, require the operator to include additional information in the reclamation plan. Such information may include, but is not limited to, one (1) or more of the following: ()

i. A description of the quantities, size, geologic characteristics, and durability of the materials to be used for final reclamation and armoring. ()

ii. A description of how the coarse and durable materials will be handled and/or stockpiled, including a schedule for such activities that will ensure adequate quantities are available during reclamation. ()

f. The director may, after considering the type, size, and potential environmental impact of the facility, require the operator to prepare-provide a geotechnical analysis and report. If failure of these structures can reasonably be expected to impact adjacent surface or ground waters or adjacent private or state-owned lands, the analysis may be required to consider the long-term stability of these structures, the potential for ground water accumulation, and the expected seismic accelerations at the site. The report must bear the imprint of an Idaho licensed professional engineer that is both signed and dated by the engineer. The report shall show that the following features, if present, are designed in a manner that is consistent with industry standards to minimize the potential for failure: ()

i. Any waste rock or overburden stockpiles; ()

ii. Any pit walls proposed to be more than one hundred (100) feet high; and ()

iii. Any pit walls where geologic conditions could lead to failure of the wall regardless of the height. ()

g. Underground mines must provide the following additional information: ()

i. Location and dimensions of all underground mine openings at the ground surface, including but not limited to vents, shafts, and adits; and ()

ii. A description of how each mine opening in subparagraph 070.04.g.i of these rules will be secured during reclamation to eliminate hazards to human health and safety. ()

h. A description of post-closure activities that includes the proposed length of the post-closure period and the following: ()

i. A summary of procedures and methods for water management including any likely IPDES permit, stormwater permit, and monitoring required for any ground water point of compliance, along with sufficient information to support a cost estimate for such water management activities. ()

ii. Care and maintenance for facilities after mining has ceased. ()

i. Other pertinent information the Department has determined is necessary to ensure that the operator

will comply with the requirements of the chapter. ()

05. Operating Plan Requirements. A complete operating plan shall consist of: ()

a. Ore, tailings, and waste rock handling flow sheets and diagrams. ()

b. Waste rock management plan. ()

c. Water quality monitoring locations. ()

d. Anticipated concurrent reclamation prior to the cessation of mining. ()

e. Estimated throughput and timeline for mining. ()

f. Types of ore processing and beneficiation. ()

g. Process fluid pond volumes and anticipated contents, if applicable. ()

06. Monitoring Data. The Department will, as needed and through consultation with DEQ, obtain the operator's baseline data on ground water or surface water gathered during the planning and permitting process for the operation, and may require the operator to furnish additional monitoring data during the life of the project. This will not require any additional monitoring data where such data is already provided under an IPDES permit, SWPPP, ground water point of compliance, or other federal or state requirements for collecting surface or ground water data. ()

071. APPLICATION PROCEDURE AND REQUIREMENTS FOR PERMANENT CLOSURE OF CYANIDATION FACILITIES.

01. Permanent Closure Plan Approval Required. No operator shall operate a new cyanidation facility or materially modify or materially expand an existing cyanidation facility prior to obtaining a permit, approval from the director and before the operator has filed financial assurance, as required by these rules. ()

02. Permanent Closure Plan Requirements. A permanent closure plan shall: ()

a. Identify the current owner of the cyanidation facility and the party responsible for the permanent closure and the long-term care and maintenance of the cyanidation facility; ()

b. Include a timeline showing: ()

i. The schedule to complete permanent closure activities, including neutralization of process waters and material stabilization, and the time period for which the operator shall be is responsible for post-closure activities; and ()

ii. If the operator plans to complete construction, operation, and/or permanent closure of the cyanidation facility in phases, the schedule to begin each phase of construction, operation, and/or permanent closure activities and any associated post-closure activities. ()

c. Provide the objectives, methods, and procedures that will achieve neutralization of process waters and material stabilization during the closure period and through post-closure; ()

d. Provide a water management plan from the time the cyanidation facility is in permanent closure through the defined post-closure period. The plan shall must be prepared in accordance with IDAPA 58.01.13, "Rules for Ore Processing by Cyanidation," administered by the DEQ, as required to meet the objectives of the permanent closure plan. ()

e. Include the schematic drawings for all BMPs that will be used during the closure period, through

the defined post-closure period, and a description of how the BMPs support the water management plan, and an explanation of the water conveyance systems that are planned for the cyanidation facility. ()

f. Provide proposed post-construction topographic maps and scaled cross-sections showing the configuration of the final heap or tailing facility, including the final cap and cover designs and the plan for long-term operation and maintenance of the cap. Caps and covers used as source control measures for cyanidation facilities must be designed to minimize the interaction of meteoric waters, surface waters, and ground waters with wastes containing pollutants that are likely to be mobilized and discharged to waters of the state. Prior to approval of a permanent closure plan, engineering designs and specifications for caps and covers must bear the imprint of an Idaho licensed professional engineer that is both signed and dated by the engineer; ()

g. Include monitoring plans for surface and ground water during closure and post-closure periods, adequate to demonstrate water quality trends and to ensure compliance with the stated permanent closure objectives and the requirements of the chapter; ()

h. Provide an assessment of the potential impacts to soils, vegetation, and surface and ground waters for all areas to be used for the land application system and provide a mitigation plan, as appropriate. ()

i. Provide information on how the operator will comply with the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; Idaho Hazardous Waste Management Act, Chapter 44, Title 39, Idaho Code; Idaho Solid Waste Management Act, Chapter 74, Title 39, Idaho Code; and appropriate state rules, during operation and permanent closure; ()

j. Provide sufficient detail to allow the operator to prepare an estimate of the reasonable costs to implement the permanent closure plan; ()

k. Provide an estimate of the reasonable estimated costs to complete the permanent closure activities specified in the permanent closure plan in the event the operator fails to complete those activities. The estimate shall: ()

i. Identify the incremental costs of attaining critical phases of the permanent closure plan and a proposed financial assurance release schedule; ()

ii. Assume that permanent closure activities will be completed by a third party whose services are contracted for by the Board as a result of a financial assurance forfeiture under Section 47-1513, Idaho Code. ()

l. If the proposal is to complete cyanidation facility construction, operation, and/or permanent closure activities in phases: ()

i. Describe how these activities will be phased and how, after the first phase of activities, each subsequent phase will be distinguished from the previous phase or phases; and ()

ii. Describe how any required post-closure activities will be addressed during and after each subsequent phase has begun. ()

m. Provide any additional information that may be required by the Department to ensure compliance with the objectives of the permanent closure plan and the requirements of the chapter. ()

03. Preapplication Conference. Prospective applicants are encouraged to meet with the Department well in advance of preparing and submitting an application package to discuss the anticipated application requirements and application procedures, and to arrange for a visit or visits to the proposed location of the cyanidation facility. The preapplication conference may trigger a period of collaborative effort between the Department, the DEQ, and the applicant in developing checklists to be used by the agencies in reviewing an application for completion, accuracy, and protectiveness. ()

04. Application Package for Permanent Closure. An application and its contents submitted to the Department ~~shall~~ **will** be used to determine whether an applicant can complete all permanent closure activities in conformance with all applicable state laws. An application must provide information in sufficient detail to allow the director to make necessary application review decisions regarding cyanidation facility closure and protection of public health, safety, and welfare, in accordance with the chapter. A complete application package must be submitted to the Department. A complete application package for an operator proposing to use cyanidation shall consist of: ()

a. A Department application form completed, signed, and dated by the applicant. This form shall contain the following information: ()

i. Name, location, and mailing address of the cyanidation facility; ()

ii. Name, mailing address, and phone number of the operator. An out-of-state operator shall designate an in-state agent authorized to act on his behalf. In case of an emergency that requires actions to prevent environmental damage, both the operator and his agent will be notified; ()

iii. Land ownership status (federal, state, private or public); ()

iv. The legal description to the quarter-quarter section of the location of the proposed cyanidation facility; and ()

v. The legal structure (corporation, partnership, etc.) and primary place of business of the operator. ()

b. Evidence that the applicant is authorized by the Secretary of State to conduct business in the state of Idaho; ()

c. A permanent closure plan as prescribed in Subsection 071.02; ()

d. The DEQ application and supporting materials; ()

e. The fee as defined in Subsection 071.05.a. ()

05. Application Fee. The application fee shall consist of two (2) parts: ()

a. Processing and review fee. ()

i. The applicant shall pay a nonrefundable five thousand dollar (\$5,000) fee upon submission of an application. Within thirty (30) days of receiving an application and this fee, the director shall provide a detailed cost estimate to the operator which includes a description of the scope of the Department's review; the assumptions on which the Department's estimate is based; and an itemized accounting of the anticipated number of labor hours, hourly labor rates, travel expenses and any other direct expenses the Department expects to incur, and indirect expenses equal to ten percent (10%) of the Department's estimated direct costs, as required to satisfy its statutory obligation pursuant to the chapter. ()

ii. If the Department's estimate is greater than five thousand dollars (\$5,000), the applicant may agree to pay a fee equal to the difference between five thousand dollars (\$5,000) and the Department's estimate, or may commence negotiations with the Department to establish a reasonable fee. ()

iii. If, within twenty (20) days from issuance of the Department's estimate, the Department and applicant cannot agree on a reasonable application processing and review fee, the applicant may appeal to the Board. The Board shall: ()

(1) Review the Department's estimate; ()

(2) Conduct a hearing where the applicant is allowed to give testimony to the Board concerning the

Department's estimate; and ()

(3) Establish the amount of the application review and processing fee. ()

iv. If the fee is more than five thousand dollars (\$5,000), the applicant shall pay the balance of the fee within fifteen (15) days of the Board's decision or withdraw the application. ()

v. Nothing in this section shall extend the time in which the Board must act on a plan submitted. ()

b. Permanent closure cost estimate verification fee. ()

i. Pursuant to Sections 47-1506(g) and 47-1508(f), Idaho Code, the Department may employ a qualified independent party, acceptable to the operator and the Board, to verify the accuracy of the permanent closure cost estimate. ()

ii. The applicant ~~shall be~~ **is** solely responsible for paying the Department's cost to employ a qualified independent party to verify the accuracy of the permanent closure cost estimate. The applicant may participate in the Department's processes for identifying qualified parties and selecting a party to perform this work. ()

iii. If a federal agency has responsibility to establish the financial assurance amount for permanent closure of a cyanidation facility on federal land, the Department may employ the firm retained by the federal agency to verify the accuracy of the permanent closure cost estimate. If the director chooses not to employ the firm retained by the federal agency, he shall provide a written justification explaining why the firm was not employed. ()

072. -- 079. (RESERVED)

080. PROCEDURES FOR REVIEW AND DECISION UPON AN APPLICATION FOR A RECLAMATION PLAN OR PERMANENT CLOSURE PLAN.

01. Return of Application. Within thirty (30) days after receipt of a reclamation plan or permanent closure plan by the Department, an application may be returned for correction and resubmission if either the reclamation plan or permanent closure plan are incomplete. Return of an application by the director shall constitute a rejection in accordance with Section 47-1507(b), Idaho Code. ()

02. Agency Notification and Comments. ()

a. Nonconfidential materials submitted under Sections 069, 070, and 071 ~~shall~~ **will** be forwarded by the director to the Idaho Departments of Water Resources, Environmental Quality, and Fish and Game for review and comment. The director may decide not to circulate applications submitted under Section 069 if the director determines the impacts of the proposed activities are minor and do not involve surface or ground waters. The director may provide public notice on receipt of a reclamation plan or permanent closure plan. In addition, nonconfidential contents of an application will be provided to individuals who request the information in writing, as required by the Idaho Public Records Act. ()

b. Upon receipt of a complete application for a reclamation plan or a permanent closure plan, the director shall provide notice to the cities and counties where the mining or cyanidation facility operation is proposed, in accordance with Section 47-1505(7), Idaho Code. The notice shall include the name and address of the operator, the procedure and schedule for the Department's review, and an invitation to review nonconfidential portions of the application, if requested in writing. Such notice will be provided upon receipt of a reclamation plan, a permanent closure plan, or any amended plan for an existing operation, or an amended cost estimate to complete permanent closure of a cyanidation facility, if required under the chapter and these rules.. ()

03. Decision on Reclamation Plans. The director shall review a new reclamation plan or an amended reclamation plan pursuant to Sections 47-1507 and 47-1508, Idaho Code. ()

a. Approval. ()

i. Within sixty (60) days of receipt of an application that complies with Subsections 069 and 070 of these rules, the Department shall provide written notice to the applicant that the reclamation plan or any amendment(s) to an approved reclamation plan is approved or denied and, if approved, the amount of the financial assurance required; or ()

ii. If the director does not take action within sixty (60) days, a reclamation plan or any amendments thereof ~~shall be~~ is deemed to comply with the chapter, unless the sixty (60) day time period is extended pursuant to Section 47-1507(c), Idaho Code. ()

iii. The operator and director may agree, in writing, to implement additional actions with respect to reclamation that extend beyond the requirements set forth in these rules. ()

b. Inspections. The director may determine that an inspection of the proposed mining site location is necessary if the inspection will provide additional information or otherwise aid in processing of the application. ()

i. If the director decides to perform an inspection, the applicant will be contacted and asked that he or an authorized employee or agent be present. This rule shall not prevent the Department from making an inspection of the site if the applicant does not appear. ()

ii. If weather conditions preclude an inspection of a proposed mining operation, the director shall provide written notice to the applicant that review of the reclamation plan or an amended reclamation plan has been suspended until weather conditions permit an inspection, and that the schedule for a decision shall will be extended for up to thirty (30) days after weather conditions permit such inspection in accordance with Section 47-1507(c), Idaho Code. ()

04. Decision on Cyanidation Facility Permanent Closure Plans. Pursuant to Sections 47-1507 and 47-1508, Idaho Code, following review of a complete application, the director shall: ()

a. Coordination with DEQ. Initiate a coordinated interagency review of the application by providing a notice in writing to the DEQ director that the Department has received an application for permanent closure of a cyanidation facility; ()

b. Approval. ()

i. Within one-hundred eighty (180) days of receipt of an application that complies with Subsection 071.04 of these rules, the Department shall provide written notice to the applicant that the permanent closure plan is approved or denied and, if approved, the amount of the permanent closure financial assurance required; or ()

ii. If the director does not take action within one-hundred eighty (180) days, a permanent closure plan, or any amendments thereof, ~~shall be~~ is deemed to comply with the provisions of the chapter, unless the one hundred eighty (180) day time period ~~shall be~~ is extended in accordance with Section 47-1507(c), Idaho Code. ()

c. Inspections. The director may determine that it is necessary to inspect the proposed cyanidation facility location if the inspection will provide additional information or otherwise aid in processing of the application. ()

i. If the director determines to inspect the site, the applicant will be contacted and asked that he or an authorized employee or agent be present. The Department may proceed with an inspection if the applicant or his designated employee or agent does not appear. ()

ii. If weather conditions preclude an inspection of the proposed cyanidation facility, the director shall provide written notice to the applicant that processing of the application has been suspended until weather conditions

permit an inspection, and that the schedule for a decision ~~shall be~~ is extended for up to thirty (30) days after weather conditions permit such inspection in accordance with Section 47-1507(c), Idaho Code. ()

05. Permanent Closure Plan Approval. ()

a. The Department may condition its approval on issuance of a permit by the DEQ for the cyanidation facility. ()

b. Except for the concurrent and additional permanent closure requirements that may be established in a permit issued by the DEQ pursuant to Section 39-118A, Idaho Code and IDAPA 58.01.13, "Rules for Ore Processing by Cyanidation," an approved permanent closure plan shall define the nature and extent of the operator's obligation under the chapter. ()

c. The permanent closure plan, as approved by the Department in coordination with the DEQ, ~~shall will~~ be incorporated by reference into the cyanidation facility permit issued by DEQ as a permit condition and ~~shall will~~ be enforceable as such. The operator shall ensure that closure complies with the approved permanent closure plan and any additional permanent closure requirements as outlined in the permit issued by DEQ. ()

d. No sooner than one hundred and twenty (120) days after an application for a permanent closure plan has been submitted to the Department, the applicant may submit a reclamation plan as required by Section 070 of these rules. The Department will review and approve the reclamation plan in accordance with Subsection 080 of these rules. ()

e. Approval of a permanent closure plan by the Department is required even if approval of such plan has been or will be obtained from an appropriate federal agency. ()

06. Denial of an Application. If the director rejects an application, the director shall deliver in writing to the applicant a statement of the reasons the application has been rejected, the factual findings upon which the rejection is based, a statement of the applicable statute(s) and rule(s), the manner in which the application failed to fulfill the requirements of these rules, and the action that must be taken or conditions that must be satisfied to meet the requirements of the chapter and these rules. The applicant may submit an amended application in accordance with Sections 069, 070 or 071 for review and, if appropriate, approval by the Department. The director shall deny a reclamation plan, permanent closure plan, or any amendments thereof if: ()

a. The application is inaccurate or incomplete; ()

b. The cyanidation facility as proposed cannot be conditioned for construction, operation, and closure to protect public safety, health, and welfare, in accordance with the scope and intent of these rules, or to protect beneficial uses of the waters of the state, as determined by the DEQ pursuant to Section 39-118A, Idaho Code and IDAPA 58.01.13, "Rules for Ore Processing by Cyanidation" and other DEQ rules cited therein. ()

07. Public Hearing. The director may call a public hearing to determine whether a proposed application complies with the chapter and these rules. A hearing ~~shall will~~ be conducted in accordance with Section 110. ()

08. Referral to Board. The director may refer the decision concerning an application to the Board. This action will not extend the time period for a decision to approve or deny an application. ()

09. Appeal of Final Order. Any final order of the Board regarding an application for a mining reclamation plan or for permanent closure of a cyanidation facility may be appealed as set forth in Section 47-1514, Idaho Code. ()

081. -- 089. (RESERVED)

090. AMENDING AN APPROVED RECLAMATION PLAN.

01. Cause for Reclamation Plan Amendment. In the event circumstances arise that necessitate amendments to an approved reclamation plan, the operator shall submit an application to amend the plan and state the reasons the amendment is necessary. Either the operator or the director may initiate a process to amend an approved reclamation plan. If the director identifies a material change he believes requires a change in the reclamation plan, the director must deliver in writing to the operator a detailed statement identifying the material change and the action(s) necessary to address the material changes. Plan amendments have the same requirements as described in Section 069 and 070 of these rules. ()

02. Review of Amendment. The director will process an application to amend a plan in accordance with Sections 080 and 110, provided, however, that no land or aspect or provision of an approved reclamation plan that would not be affected by the proposed amendment, ~~shall be~~ is subject to the amendment, review or reapproval in connection with processing the application. Approval of an amendment shall not be conditioned upon the performance of any actions not required by the approved reclamation plan or the proposed amendment itself, unless the operator agrees to perform such actions. ()

03. Adjustments. Adjustments to an approved reclamation plan may be made by agreement between the director and the operator, if the adjustment is consistent with the overall objectives of the approved reclamation plan and so long as applicable surface and ground water quality standards will be met. Adjustments are due to changes that are smaller than material changes. ()

091. AMENDING AN APPROVED PERMANENT CLOSURE PLAN.

01. Cause for Permanent Closure Plan Amendment. In the event circumstances arise that necessitate amendments to an approved permanent closure plan, the operator shall submit an application to amend the permanent closure plan and state the reasons the amendment is necessary. Either the operator or the director may initiate a process to amend an approved permanent closure plan. Circumstances that could require a permanent closure plan to be amended include: ()

a. A material modification or material expansion in the cyanidation facility design or operation for which the approved permanent closure plan is no longer adequate; ()

b. Conditions substantially different from those anticipated in the original permit for which the approved permanent closure plan is no longer adequate; or ()

c. A material change as defined in Subsection 010.09 of these rules. ()

02. Modifications at an Operator's Request. Requests from an operator to modify a permanent closure plan ~~shall~~ must be submitted to the Department in writing. The director shall process an application for amendment in accordance with Section 080. An application to amend a permanent closure plan shall include: ()

a. A written description of the circumstances that necessitate the amendment; ()

b. Data supporting the request; ()

c. The proposed amendment; ()

d. A description of how the amendment will impact the estimated cost to complete permanent closure pursuant to the chapter; ()

e. A cost estimate to implement the amended permanent closure plan, prepared in accordance with Subsection 071.02 of these rules; and ()

f. Payment of a reasonable fee as may be determined by the director in accordance with Section 47-1508, Idaho Code. ()

03. Modification at Request of Director. If, following consultation with the DEQ, the director determines that cause exists to amend the permanent closure plan the director shall notify the operator in writing of his determination and explain the circumstances that have arisen which require the permanent closure plan to be amended. Within thirty (30) days or as agreed by the operator and the Department, the operator shall submit an application to amend the permanent closure plan in accordance with Subsection 091.02. ()

04. Adjustment. Adjustments to an approved permanent closure plan may be made by agreement between the director and the operator, if the adjustment is consistent with the overall objectives of the approved permanent closure plan and so long as applicable surface and ground water quality standards will be met. ()

092. -- 099.

(RESERVED)

100. DEVIATION FROM AN APPROVED RECLAMATION PLAN.

01. Unforeseen Events. If a mining operator finds that unforeseen events or unexpected conditions require immediate change from an approved plan, the operator may continue mining in accordance with the procedures dictated by the changed conditions, pending submission and approval of an amended plan, even though operations do not comply with the approved reclamation plan on file with the Department. This shall not excuse the operator from complying with the requirements of Sections 140 and 120. ()

02. Notification. The operator shall notify the director, in writing, within ten (10) days of the discovery of conditions that require deviation from the approved plan. A proposed amendment to the reclamation plan ~~shall~~ must be submitted by the operator within thirty (30) days of the discovery of those conditions. ()

101. -- 109.

(RESERVED)

110. PUBLIC HEARING.

01. Call for a Hearing. A public hearing called by the director following receipt of a complete application submitted in accordance with Sections 069, 070, or 071 ~~shall be is~~ conducted in accordance with Section 47-1507(d), Idaho Code. The director may call for a hearing following his preliminary review of an application for a new operation or an amendment application for an existing operation when one (1) or more of the following circumstances arises: ()

a. Public Concern. The public, potentially affected landowners, any governmental entity, or any other interested parties who may be affected by the operations proposed under the chapter have registered, in writing, a concern with the director regarding the proposed operations or cyanidation facility. The purpose of the public hearing ~~shall be is~~ to gather written and oral comments as to whether the proposed reclamation plan or permanent closure plan meets the requirements of the chapter and these rules. ()

b. Agency Concern. The director determines, after consultation with the Department of Water Resources, DEQ, the Department of Fish and Game, and affected Indian tribes that the proposed mining or cyanidation facility operations could reasonably be expected to significantly degrade adjacent surface and/or ground waters or otherwise threaten public health, safety or welfare. The purpose of a public hearing held under this subsection will be to receive written and oral comments on the measures the operator is proposing to use to protect surface and/or ground water quality from nonpoint source pollution. ()

02. Consolidation. If the director determines that a hearing should be held, he shall order that such proceedings be consolidated. The applicant and the public must be advised of the specific subjects to be discussed at the hearing at least twenty (20) days prior to the hearing. The Department will coordinate with the DEQ, as appropriate, for any hearings relating to permanent closure of a cyanidation facility to streamline application processing.()

03. Location. A hearing ~~shall will~~ be held in the locality of the proposed mine or a proposed cyanidation facility at a reasonably convenient time and place for public participation. The director may call for more than one hearing when conditions warrant. ()

04. Notice of Hearing. The director shall provide at least twenty (20) days' advance notice of the date, time, and place of the hearing to: federal, state, and local governmental agencies, Indian tribes who may have an interest in the decision as shown on the application, and the public; to all persons who petitioned for a hearing; and to any person identified by the applicant under Subsection 070.02 as a legal owner of the land that will likely be affected by the proposed operations. Notice to the applicant must be sent by certified mail and postmarked not less than twenty (20) days before the scheduled public hearing date. ()

05. Publication of Notice. The director shall provide at least twenty (20) days advance notice to the general public of the date, time, and place of the hearing. A newspaper advertisement will be placed once a week, for two (2) consecutive weeks, in the locale of the area covered by the application. ()

a. In the event a hearing is ordered under Section 110, the notice shall describe: ()

i. The potentially significant surface water quality impacts from the proposed mining operation and the operator's description of the measures that will be used to prevent degradation of adjacent surface and ground waters from sources of pollution; or ()

ii. The objectives of a permanent closure plan that have been submitted for review. ()

b. A copy of the application ~~shall~~will be placed for review in a public place in the local area of the proposed mining operation or cyanidation facility, in the closest Department area office, and the Department's administrative office in Boise. ()

06. Hearing Officer. The hearing ~~shall~~will be conducted by the director or his designated representative. Both oral and written testimony will be accepted. Proceedings of the hearing will be recorded on audio tape and a verbatim transcript will be prepared. ()

07. Consideration of Hearing Record. The Department ~~shall~~will consider the hearing record when reviewing reclamation plans or permanent closure plans for final approval or rejection. ()

111. COMPLETION OF PERMANENT CLOSURE.

01. Implementation of a Permanent Closure Plan. Unless otherwise specified in the approved permanent closure plan, an operator must begin implementation of the approved permanent closure plan as follows: ()

a. Within two (2) years of the final addition of new cyanide to the ore process circuit; or ()

b. If the product recovery phase of the cyanidation facility has been suspended for a period of more than two (2) years. ()

02. Submittal of a Permanent Closure Report. The operator shall submit a permanent closure report to the Department for review and approval. A permanent closure report ~~shall~~must be of sufficient detail for the directors of the Department and DEQ to issue a determination that permanent closure, as defined by Subsection 010.15 of these rules, has been achieved. The permanent closure report shall address: ()

a. The effectiveness of material stabilization; ()

b. The effectiveness of the water management plan and the adequacy of the monitoring plan; ()

c. The final configuration of the cyanidation facility and its operational/closure status; ()

d. The post-closure operation, maintenance, and monitoring requirements, and the estimated reasonable cost to complete those activities; ()

- e. The operational/closure status of any land application site of the cyanidation facilities; ()
- f. Source control systems that have been constructed or implemented to eliminate, mitigate, or contain short- and long-term discharge of pollutants from the cyanidation facility, unless otherwise permitted; ()
- g. The short- and long-term water quality trends in surface and ground water through the statistical analysis of the existing monitoring data pursuant to the ore-processing by cyanidation permit; ()
- h. Ownership and responsibility for the site upon permanent closure during the defined post-closure period; ()
- i. The future beneficial uses of the land, surface and ground waters in and adjacent to the closed cyanidation facilities; and ()
- j. How the permanent closure of the cyanidation facility complies with the Resource Conservation and Recovery Act, Hazardous Waste Management Act, Solid Waste Management Act, and appropriate rules. ()

03. Review of a Permanent Closure Report. The Department will immediately forward a copy of the permanent closure report to DEQ for their review and comment. ()

112. DECISION TO APPROVE OR DISAPPROVE OF A PERMANENT CLOSURE REPORT.

01. Receipt of a Permanent Closure Report. Within sixty (60) days of receipt of a permanent closure report, the director shall issue to the operator a director's determination of approval or disapproval of the permanent closure report. ()

02. Permanent Closure Report Is Disapproved. The director's determination to approve or disapprove a permanent closure report ~~shall~~ will be based on the permanent closure report's demonstration that permanent closure has resulted in long-term neutralization of process waters and material stabilization. If a permanent closure report is disapproved, the director shall provide in writing identification of: ()

- a. Errors or inaccuracies in the permanent closure report; ()
- b. Issues or details that require additional clarification; ()
- c. Failures to fully implement the approved permanent closure plans; ()
- d. Failures to ensure protection for public health, safety, and welfare or to prevent degradation of waters of the state; ()
- e. Outstanding violations or other noncompliance issues; and ()
- f. Other issues supporting the Department's disagreement with the contents, final conclusions or recommendations of the permanent closure report. ()

113. -- 119. (RESERVED)

120. FINANCIAL ASSURANCE REQUIREMENTS.

01. Submittal of Financial Assurance Before Mining. Prior to beginning any mining on a mine panel covered by a reclamation plan, an operator shall submit to the director, on a Department form, financial assurance meeting the requirements of this rule. ()

02. Submittal of Financial Assurance Before Operating a Cyanidation Facility. Prior to beginning operation of a cyanidation facility an operator will submit to the director, on a Department form, financial assurance meeting the requirements of Section 47-1512(a)(2), Idaho Code. The financial assurance will be in an amount equal

to the total costs estimated under paragraph 071.02.k. and Section 120 of these rules. ()

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. ()

04. Phased Financial Assurance. If the Department approves a reclamation plan or permanent closure plan with phased financial assurance, then financial assurance may increase incrementally commensurate with the additional reclamation or permanent closure liability. After construction and operation of the initial phase has commenced and after filing by an operator of the initial financial assurance, an operator will not construct any component of a subsequent phase or phases of the subject mine or cyanidation facility before filing the additional financial assurance amount that is required by the Board. If phased financial assurance is not authorized, the operator is required to file the financial assurance amount required to complete reclamation or permanent closure of all planned phases prior to any construction of the mine or operation of the cyanidation facility. ()

05. Financial Assurance for Mines with Five (5) or Less Disturbed Acres. Financial assurance will be a minimum of five thousand dollars (\$5,000) per acre unless the operator or the Department determine that the estimated reasonable costs of reclamation require a different amount. No financial assurance may exceed fifteen thousand dollars (\$15,000) for a given acre of affected land unless the condition in Subsection 120.07 of these rules have been met. ()

06. Financial Assurance for Cyanidation Facility Affecting Five (5) or Less Disturbed Acres. The Board may require financial assurance in excess of five million dollars (\$5,000,000) if the conditions in Subsection 120.07 of these rules have been met. ()

07. Process for Requiring Higher Financial Assurance. Financial assurance in excess of the amounts in Subsections 120.05 and 06 of this rule may only be obtained if: ()

a. The Board has determined that such financial assurance is necessary to meet the requirements of the chapter; and ()

b. The Board has delivered to the operator, in writing, a notice setting forth the reasons it believes such financial assurance is necessary; and ()

c. The Board has conducted a hearing where the operator is allowed to give testimony to the Board concerning the amount of the proposed financial assurance, as provided by Section 47-1512, Idaho Code. This requirement for a hearing may be waived, in writing, by the operator. ()

08. Financial Assurance for Mine or Cyanidation Facility with More than Five (5) Disturbed Acres. The amount of financial assurance ~~shall~~must be the amount necessary for the Board to pay the estimated reasonable costs of reclamation required under the reclamation plan or permanent closure plan, including indirect costs in Section 120 of these rules. ()

09. Mobilization Costs are Direct Costs. Mobilization and demobilization costs will be included in financial assurance calculations as a direct cost. Costs will be calculated to the mine from the nearest community that has at least two (2) contractors able to perform the reclamation. ()

10. Indirect Costs for Reclamation Cost Calculations. Reclamation and permanent closure cost calculations shall include the following indirect costs and should fall within the percentages given. If a different percentage is used, then a justification must be given. Alternatively, an operator may propose the use of an industry recognized standardized reclamation cost estimation tool for use in reclamation and/or permanent closure cost estimates and the use of the tool's associated indirect costs which are established using the project direct costs as

- identified: ()
- a. Contractor profit at six percent to ten percent (6% to 10%) of direct costs; ()
 - b. Contractor overhead at four percent to eight percent (4% to 8%) of direct costs; ()
 - c. Contractor insurance at one and a half percent (1.5%) of labor costs; ()
 - d. Contractor bonding at two and a half percent to three and a half percent (2.5% to 3.5%) of direct costs; ()
 - e. Contract administration at five percent to nine percent (5% to 9%) of direct costs; ()
 - f. Re-engineering for mines or cyanidation facilities with direct reclamation costs over five hundred thousand dollars (\$500,000). Re-engineering will be ~~determined at~~ three percent to seven percent (3% to 7%) of direct costs; ()
 - g. Scope contingency at six percent to eleven percent (6% to 11%) of direct costs; ()
 - h. Bid contingency at six percent to eleven percent (6% to 11%) of direct costs; and ()
 - i. Other site specific costs as appropriate. ()
11. **Salvage Value Not Allowed.** Reclamation or permanent closure costs will not be reduced by assigning a salvage value to structures or fixtures to be removed during reclamation. ()
12. **Mining Operation Conducted by Public or Government.** Notwithstanding any other provision of law to the contrary, the financial assurance provisions of the chapter and these rules do not apply to any surface mining operations conducted by a public or governmental agency for maintenance, repair, or construction of a public highway. ()
13. **Annual Financial Assurance Review for Reclamation Plans.** At the beginning of each calendar year, the operator shall notify the director of any increase in the acreage of affected land beyond that covered by the existing financial assurance which will result from planned mining activity within the next twelve (12) months. A commensurate increase in the financial assurance will be required for an increase in affected acreage. Any additional financial assurance required ~~shall~~ **must** be submitted on the appropriate form within ninety (90) days of operator's receipt of notice from the Department that an additional amount is required. In no event will mining operations be conducted that would affect additional acreage until the appropriate form and financial assurance has been submitted to the Department. Acreage on which reclamation is complete will be reported in accordance with Subsection 120.16 and after release of this acreage from the reclamation plan by the director, the financial assurance will be reduced by the amount appropriate to reflect the completed reclamation. ()
14. **Financial Assurance Provided to the Federal Government.** Any financial assurance provided to the federal government that also meets the requirements of Section 120 ~~shall~~ **will** be sufficient for the purposes of these rules. A mine providing financial assurance through an order under the Comprehensive Environmental Response, Compensation, and Liability Act is not required to submit financial assurance to the Department as described in Idaho Code 47-1512(n). ()
15. **Financial Assurance Reduction for Mines.** ()
- a. An operator may petition the director for a change in the initial financial assurance amount. The director will review the petition and if satisfied with the information presented a revised financial assurance amount will be determined. The revised amount will be based upon the estimated cost that the director would incur should a forfeiture of financial assurance occur and it became necessary for the director, through contracting with a third party, to complete reclamation to the standards established in the plan. ()

b. Upon finding that any land covered by financial assurance will not be affected by mining, the operator will notify the director. The amount of the financial assurance will be reduced by the amount being held to reclaim those lands. ()

c. Any request for financial assurance reduction will be answered by the director within thirty (30) days of receiving such request unless weather conditions prevent inspection. ()

16. Financial Assurance Release Following Mine Reclamation. Upon completion of all or a portion of the reclamation or post-closure activity specified in the plan, the operator may notify the director of his desire to secure release from financial assurance. When the director has verified that the requirements of the reclamation plan have been substantially met as stated in the plan, the financial assurance will be released. ()

a. Any request for financial assurance release will be answered by the director within thirty (30) days of receiving such request unless weather conditions prevent inspection. ()

b. If the director finds that a specific portion of the reclamation or post-closure has been substantially completed, the financial assurance may be reduced to the amount required to complete the remaining reclamation or post-closure. The following schedule will be used to complete these financial assurance reductions unless the director determines in a specific case that this schedule is not appropriate and specifies a different schedule, or the approved reclamation plan has a different schedule based on site-specific conditions. ()

i. Sixty percent (60%) of the financial assurance may be released when the operator completes the required backfilling, regrading, topsoil replacement, and drainage control of a specific area in accordance with the approved reclamation plan; and ()

ii. After revegetation activities have been performed by the operator on the regraded lands, according to the approved reclamation plan, the Department may release an additional twenty-five percent (25%) of the financial assurance. ()

c. The remaining financial assurance shall not be released: ()

i. As long as the affected lands are contributing suspended solids to surface waters outside the affected area in excess of state water quality standards and in greater quantities than existed prior to the commencement of mining operations; ()

ii. Until final removal of equipment and structures related to the mining activity or until any remaining equipment and structures are brought under an approved reclamation plan and financial assurance by a new operator; and ()

iii. Until all temporary sediment or erosion control structures have been removed and reclaimed or until such structures are brought under an approved reclamation plan and financial assurance by a new operator. ()

17. Corporate Guarantee Released First. If an operator provides part of a their financial assurance through a corporate guarantee, then the corporate guarantee will be released prior to any other type of financial assurance being released. Other types of financial assurance will only be released after the corporate guarantee has been completely released. ()

18. Cooperative Agreements. The director may through private conference, conciliation, and persuasion reach a cooperative agreement with the operator to correct deficiencies in complying with the reclamation plan and thereby postpone action to forfeit the financial assurance and cancel the reclamation plan if all deficiencies are satisfactorily corrected within the time specified by the cooperative agreement. ()

19. Permanent Closure Financial Assurance Review. The Department will periodically review all financial assurances filed for permanent closure to determine their sufficiency to complete the work required by an approved permanent closure plan. For reviews conducted under paragraphs a and b the director may employ a qualified

independent party to verify the accuracy of the revised permanent closure cost estimate as described in paragraph 071.05.b. of these rules. ()

a. Once every three (3) years, the operator must submit an updated permanent closure cost estimate to the Department for review. The director will review the updated estimate to determine whether the existing financial assurance amount is adequate to implement the permanent closure plan, as approved by the Department. Any resulting change in the financial assurance amount does not in and of itself require an amendment to the permanent closure plan as may be required by Section 091 of these rules. The director will review the estimate to determine whether the existing financial assurance amount is adequate to complete permanent closure of the cyanidation facility. ()

b. When the director determines that there has been a material change in the estimated reasonable costs to complete permanent closure: ()

i. The director will notify the operator in writing of his intent to reevaluate the financial assurance amount. Within a reasonable time period determined by the Department, the operator will provide to the Department a revised cost estimate to complete permanent closure as approved by the Department. ()

ii. Within thirty (30) days of receipt of the revised cost estimate, the director will notify the operator in writing of his determination of financial assurance adequacy. ()

iii. Within ninety (90) days of notification of the director's assessment, the operator will make the appropriate adjustment to the financial assurance or the director will reduce the financial assurance as appropriate. ()

c. The Department may conduct an internal review of the amount of each financial assurance annually to determine whether it is adequate to complete permanent closure. ()

20. Permanent Closure Financial Assurance Release. ()

a. A financial assurance filed for permanent closure of a cyanidation facility will be released according to the schedule in the permanent closure plan. The schedule will include provisions for the release of the post-closure monitoring and maintenance portions of the financial assurance. The schedule may be adjusted to reflect the operator's performance of permanent closure activities and their demonstrated effectiveness. ()

b. Upon completion of an activity required by an approved permanent closure plan, the operator may request in writing a financial assurance reduction for that activity. The Department will notify the operator within thirty (30) days whether or not the activity meets the requirements of the permanent closure plan. When the director, in consultation with DEQ, has verified that the activity meets the requirements of the permanent closure plan, the financial assurance will be reduced by an amount to reflect the activity completed. ()

c. Upon the director's determination that all activities specified in the permanent closure plan have been successfully completed, the Department will, in accordance with Section 47-1512(i), Idaho Code, release the balance remaining after partial financial assurance releases. ()

21. Liabilities for Reclamation Costs Not Covered by Financial Assurance. An operator who is not required to furnish financial assurance by these rules but fails to reclaim may be subject to civil penalty under Section 47-1513(c), Idaho Code. The amount of civil penalty will be the estimated cost of reasonable reclamation of affected lands as determined by the director. Reasonable reclamation of the site will be presumed to be in accordance with the standards established in the approved reclamation plan. The amount of the civil penalty is in addition to those described in Section 47-1513(f), Idaho Code. ()

22. Appeal Process for Financial Assurance Decisions. All decisions regarding any financial assurance extension requests, 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. ()

121. (RESERVED)

122. FORM OF FINANCIAL ASSURANCE.

01. Corporate Surety Bond. ()

a. A corporate surety bond is an indemnity agreement executed for the operator and a corporate surety licensed to do business in the state of Idaho, filed on the appropriate Department form. The bond ~~shall~~ **must** be payable to the state of Idaho and conditioned to require the operator to faithfully perform all requirements of the chapter, and the rules in effect on the date that a reclamation plan or a permanent closure plan was approved by the Department.

()

b. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties in Circular 570 of the U.S. Department of the Treasury.

()

c. When replacement financial assurance is submitted, the following rider must be filed with the Department as part of the replacement before the existing financial assurance will be released: “[Surety company or principal] understands and expressly agrees that the liability under this bond shall extend to all acts for which reclamation is required on areas disturbed in connection with reclamation plan or permanent closure plan [number], both prior to and subsequent to the date of this rider.”

()

02. Collateral Bond. A collateral bond is an indemnity agreement executed by or for the operator, payable to the state of Idaho, pledging cash deposits, government securities, real property, time deposit receipts, or certificates of deposit of any financial institution authorized to do business in the state. Collateral bonds ~~shall be~~ **are** subject to the following conditions.

()

a. The director shall obtain possession of cash or other negotiable collateral bonds, and, upon receipt, deposit them with the state treasurer to hold them in trust for the purpose of bonding reclamation or permanent closure performance.

()

b. The director shall value the collateral at its current market value minus any penalty for early withdrawal, not its face value.

()

c. Certificates of deposit or time deposit receipts ~~shall be~~ **are** issued or assigned, in writing, to the state of Idaho and upon the books of the financial institution issuing such certificates. Interest will be allowed to accrue and may be paid by the bank, upon demand and after written release by the Department, to the operator or another person who posted the collateral bond.

()

d. Amount of an individual certificate of deposit or time deposit receipt may not exceed the maximum amount insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation or their successors.

()

e. Financial institutions issuing certificates of deposit or time deposit receipts will waive all rights of set-off or liens which it has or might have against such certificates, and will place holds on those funds that prevent the operator from withdrawing funds until the Department sends a written release to the bank.

()

f. Certificates of deposit and time deposit receipts ~~shall~~ **must** be automatically renewable. ()

03. Letters of Credit. A letter of credit is an instrument executed by a bank doing business in Idaho, made at the request of a customer. A letter of credit states that the issuing bank will honor drafts for payment upon compliance with the terms of the credit. Letters of credit ~~shall be~~ **are** subject to the following conditions. ()

a. All credits ~~shall~~ **must** be irrevocable and prepared in a format prescribed by the director. ()

b. All credits must be issued by an institution authorized to do business in the state of Idaho or through a correspondent bank authorized to do business in the state of Idaho.

()

c. The account party on all credits must be identical to the entity identified in the reclamation plan or in the permanent closure plan and on the cyanidation facility permit as the party obligated to complete reclamation or permanent closure. ()

04. Real Property. Real property used as a collateral bond must be a perfected, first lien security interest in real property located within the state of Idaho, in favor of the state of Idaho, which meets the requirements of these rules using a deed of trust form acceptable to the Department for all lands forty (40) acres or less, or a mortgage form approved by the Department for all lands over forty (40) acres. ()

a. The following information must be submitted for real property collateral: ()

i. The value of the real property. The property will be valued at the difference between the fair market value and any reasonable expense anticipated by the Department in selling the property. The fair market value will be determined by an appraisal conducted by a licensed appraiser. The appraiser will be selected by the Department and the Department will provide appraisal instructions; however, the operator may propose an appraiser to the Department. The appraisal will be performed in a timely manner, and a copy sent to the Department and the operator. The expense of the appraisal will be borne by the operator. The real property will be reappraised every three (3) years; ()

ii. A description of the property and a site improvement survey plat to verify legal descriptions of the property and to identify the existence of recorded easements; ()

iii. Proof of ownership and title to the real property; ()

iv. A current title binder which provides evidence of clear title containing no exceptions, or containing only exceptions acceptable to the director; and ()

v. Phase I environmental assessment. ()

b. Real property will not include any lands in the process of being mined, reclaimed, or planned to be mined under an approved reclamation plan. The operator may offer any lands within a reclamation plan that have received full release of financial assurances. In addition, any land used as a security will not be mined or otherwise disturbed while it is a security. The acceptance of real property within the permit boundary will be at the discretion of the director. ()

05. Trusts. Trusts are subject to the requirements of Sections 47-1512(l) and 68-101, et seq. Idaho Code. The proposed trustee, range of investments, initial funding, schedule of payments, trustee fees, and expected rate of return are subject to review and approval by the Department through a memorandum of agreement with the operator. The trustee will invest the principal and income of the fund in accordance with general investment practices. Investments can include equities, bonds, and government securities and be well diversified in accordance with the following conditions: ()

a. The joint party on the trust must be identical to the entity identified in the reclamation plan or in the permanent closure plan as the party obligated to complete reclamation or permanent closure. ()

b. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. ()

c. Equities may include stock funds, stock index funds, or individual stocks, but an individual stock may not exceed five percent (5%) of the total value of the trust. Direct investments in the operator's company or parent company are not allowed. Corporate equities must not exceed seventy percent (70%) of the total value of the trust fund. ()

d. Bonds or money market funds must be investment-grade rated securities from a nationally recognized securities rating service. Individual corporate bonds may not exceed five percent (5%) of the total value of the trust. ()

- e. Payments into the trust will be made as follows: ()
- i. When used to cover reclamation or permanent closure costs, the trust fund will be initially funded in an amount needed to cover any surface disturbance in the first year of the trust fund. Annual payments into the trust will occur as needed prior to the disturbance of additional affected land at the mine or cyanidation facility. ()
- ii. When used to cover a portion of reclamation or permanent closure costs in combination with other types of financial assurance, the initial and annual payments will be the pro-rata amount of the reclamation or permanent closure costs as described in subparagraph 122.05.e.i of these rules. ()
- iii. When used to cover the anticipated post-closure costs, a payment schedule will be created in the memorandum of agreement. The post-closure costs must be fully funded by the time the post-closure period occurs. The trust fund, together with the anticipated earnings, must be enough at the expected start of the post-closure period to cover the costs of the post-closure period. ()
- f. Disbursements from the trust will only occur upon written authorization of the Department. Disbursements include payments to the trustee or any other payment of funds not related to financial assurance release and not specifically mentioned in the memorandum of agreement. ()
- g. Trusts will be irrevocable. ()
- h. Income accrued on trust funds will be retained in the trust, except as otherwise agreed by the director under the terms of an agreement governing the trust. ()
- 06. Corporate Guarantees.** ()
- a. Up to fifty percent (50%) of required financial assurance for reclamation costs may be provided by a corporate guarantee. Post-closure costs for reclamation plans and permanent closure plans cannot be covered by a corporate guarantee. ()
- b. Only operators who submit plans under Sections 070 or 071 of these rules may provide a corporate guarantee. ()
- c. Operators who want to provide financial assurance through a corporate guarantee must provide an audited financial statement from a third-party certified public accountant that meets the requirements of IDAPA 24.30.01, the Idaho Accountancy Rule. The audited financial statement must show the operator meets two (2) of the following three (3) criteria and the criteria in paragraph d of this section: ()
- i. Ratio of total liabilities to stockholder's equity is less than two (2) to one (1); ()
- ii. Ratio of sum of net income plus depreciation, depletion, and amortization to total liabilities greater than ten one-hundredths (0.1) to one (1); or ()
- iii. Ratio of current assets to current liabilities greater than one and fifty one-hundredths (1.5) to one (1). ()
- d. The following financial criteria must also be met for a corporate guarantee: ()
- i. Net working capital and tangible net worth are each equal to or greater than the total reclamation or permanent closure cost estimate; ()
- ii. Tangible net worth of at least ten million dollars (\$10,000,000); and ()
- iii. At least ninety percent (90%) of the corporation's total assets are in the United States, or the total assets in the United States are at least six (6) times greater than total reclamation or permanent closure cost estimate.

()

e. A corporate guarantee can be provided by a parent company guarantor if that guarantor meets the conditions of paragraphs (c) and (d) in this section as if it were the operator. The terms of this corporate guarantee will provide for the following: ()

i. The operator and the parent company will submit to the Department an indemnity agreement signed by corporate officers from both companies who are authorized to bind their corporations. The operator or parent company must also provide an affidavit certifying that such an agreement is valid under all applicable federal and state laws. The indemnity agreement will bind each party jointly and severally; ()

ii. If the operator fails to complete reclamation or permanent closure, the parent company guarantor will do so or the guarantor will be liable under the indemnity agreement to provide funds to the Department sufficient to complete reclamation or permanent closure as per the plan, but not to exceed the financial assurance amount; ()

iii. The corporate guarantee will remain in force unless the parent company guarantor sends notice of cancellation by certified mail to the operator and to the Department at least ninety (90) days in advance of the cancellation date, and the Department accepts the cancellation; and ()

iv. The cancellation will be accepted by the Department only if the operator obtains replacement financial assurance before the cancellation date or if the lands for which the corporate guarantee, or portion thereof, was accepted have not been disturbed. ()

v. If the operator is a partnership or joint venture, the indemnity agreement will bind each partner or member who has a beneficial interest, directly or indirectly, in the operator. ()

f. The operator, or parent company guarantor, is required to either complete the approved reclamation or permanent closure plan for the lands in default, or pay to the Department an amount necessary to complete the approved reclamation, not to exceed the amount established in Section 120 of these rules. ()

g. The operator or parent company guarantor will submit an annual update of the information required under paragraphs (c) and (d) of this section by April 1 following the issuance of the corporate guarantee. ()

h. If the operator or parent company guarantor's financial fitness falls below the eligibility for providing a corporate guarantee they will immediately notify the Department, and the Department will require the operator to submit replacement financial assurance within ninety (90) days of being notified. ()

i. The Department may require the operator or parent company guarantor to provide an update of the information in paragraphs (c) and (d) in this section at any time. The update must be provided within thirty (30) days of being requested. The requirements of paragraph (h) in this Section will then apply. ()

07. Blanket Financial Assurance. Where an operator is involved in more than one (1) reclamation plan or permanent closure plan permitted by the Department, the director may accept a blanket financial assurance in lieu of separate reclamation or permanent closure financial assurances under the approved plans. The amount of such financial assurance ~~shall~~**must** be equal to the total of the requirements of the separate financial assurances being combined into a single financial assurance, as determined pursuant to Section 47-1512, Idaho Code, and in accordance with Section 120 of these rules. The principal ~~shall be~~**is** liable for an amount no more than the financial assurance filed for completion of reclamation activities or permanent closure activities if the Department takes action against the financial assurance pursuant to Section 47-1513, Idaho Code and Section 123 of these rules. ()

08. Reclamation Fund. Reclamation plans processed under Section 069 of these rules may provide financial assurance through the Reclamation Fund established by Section 47-18, Idaho Code, and IDAPA 20.03.03. If financial assurance is provided through the Reclamation Fund, no other type of financial assurance may be combined with it on an individual mine site. ()

09. Multiple Forms of Financial Assurance Accepted. An operator may combine more than one type of financial assurance, within the limitations of each type of financial assurance, to reach the full amount of the required financial assurance for a reclamation plan or permanent closure plan. ()

123. FORFEITURE OF FINANCIAL ASSURANCE.

A financial assurance may be forfeited in accordance with Section 47-1513, Idaho Code, when the operator has not conducted the reclamation or has not conducted permanent closure in accord with an approved plan and the applicable requirements of these rules. ()

124. -- 129. (RESERVED)

130. TRANSFER OF APPROVED PLANS.

01. Reclamation Plans. A reclamation plan may be transferred from one (1) operator to another only after the Department's approval. To complete a transfer, the new applicant must file a notarized assumption of reclamation plan form as prescribed by the Department and provide replacement financial assurance. The new operator ~~then shall be~~ **is** responsible for the past operator's obligations under the chapter, these rules, and the reclamation plan. ()

02. Permanent Closure Plans. An approved permanent closure plan permit may be transferred to a new operator if he provides written notice to the director that includes a specific date for transfer of permanent closure responsibility, coverage, and liability between the old and new operators no later than ten (10) days after the date of closure. An operator ~~shall be~~ **is** required to provide such notice at the same time he provides notice to the DEQ as required IDAPA 58.01.13, "Rules for Ore Processing by Cyanidation." To complete a transfer, the new applicant must: ()

- a. File a notarized assumption of permanent closure plan form as prescribed by the Department; and ()
- b. File a replacement permanent closure plan financial assurance on a form approved by the Department. ()

131. -- 139. (RESERVED)

140. BEST MANAGEMENT PRACTICES AND RECLAMATION FOR MINING OPERATION AND PERMANENT CLOSURE OF CYANIDATION FACILITIES.

These are the minimum standards expected for all activities covered by these rules. Specific standards for individual mines may be appropriate based on site specific circumstances, and must be described in the plan. ()

01. Nonpoint Source Control. ()

a. Appropriate BMPs for nonpoint source controls ~~shall~~ **will** be designed, constructed, and maintained with respect to site-specific mining operations or permanent closure activities. Operators shall utilize BMPs designed to achieve state water quality standards and to protect existing beneficial uses of adjacent waters of the state. State water quality standards, as administered by DEQ, ~~shall be~~ **is** the standard that must be achieved by BMPs. ()

b. If the BMPs utilized by the operator do not result in compliance with Subsection 140.01.a., the director shall require the operator to modify or improve such BMPs to meet the controlling, water quality standards as set forth in current laws, rules, and regulations. ()

02. Sediment Control. In addition to proper mining techniques and reclamation measures, the operator shall take necessary steps at the close of each operating season to assure that sediment movement associated with surface runoff over the area is minimized in order to achieve water quality standards, or to preserve the condition of water runoff from the mined area prior to commencement of the subject mining or exploration operations, whichever is the more appropriate standard. Sediment control measures refer to best management practices carried out within and, if necessary, adjacent to the disturbed area and consist of utilization of proper mining and reclamation measures,

as well as specific necessary sediment control methods, separately or in combination. Specific sediment control methods may include, but are not limited to: ()

- a. Keeping the disturbed area to a minimum at any given time through progressive reclamation; ()
- b. Shaping waste to help reduce the rate and volume of water runoff by increasing infiltration; ()
- c. Retaining sediment within the disturbed area; ()
- d. Diverting surface runoff around the disturbed area; ()
- e. Routing runoff through the disturbed area using protected channels or pipes so as not to increase sediment load; ()
- f. Use of riprap, straw dikes, check dams, mulches, temporary vegetation, or other measures to reduce overland flow velocities, reduce runoff volume, or retain sediment; and ()
- g. Use of adequate sediment ponds, with or without chemical treatment. ()

03. Clearing and Grubbing. Clearing and grubbing of land in preparation for mining exposes mineral soil to the erosive effects of moving water. Operators are cautioned to keep such areas as small as possible (preferably no more than one (1) year's mining activity) as the operator ~~shall be~~ is required to meet the applicable surface water quality standards on all such areas. Where practicable, trees and slash should be stockpiled for use in seedbed protection and erosion control. ()

04. Overburden/Topsoil. To aid in the revegetation of affected lands where mining operations result in the removal of substantial amounts of overburden including any topsoil, the operator should remove the available topsoil or other growth medium as a separate operation for such area. Unless there are previously affected lands which are graded and immediately available for placement of the newly removed topsoil or other growth medium, the topsoil or other growth medium ~~shall~~ will be stockpiled and protected from erosion and contamination until such areas become available. ()

- a. Overburden/Topsoil Removal. ()
 - i. Any overburden/topsoil to be removed should be removed prior to any other mining activity to prevent loss or contamination; ()
 - ii. Where overburden/topsoil removal exposes land area to potential erosion, the director, under the reclamation plan, may require BMPs necessary to prevent violation of water quality standards; and ()
 - iii. Where the operator can show that an overburden material other than topsoil is conducive to plant growth, or where overburden other than topsoil is the only material reasonably available, such overburden may be allowed as a substitute for or a supplement to the available topsoil. ()

b. Topsoil Storage. Topsoil stockpiles ~~shall~~ will be placed to minimize rehandling and exposure to excessive wind and water erosion. Topsoil stockpiles ~~shall~~ will be protected as necessary from erosion by use of temporary vegetation or by other methods which will control erosion, including, but not limited to, silt fences, chemical binders, seeding, and mulching. ()

c. Overburden Storage. Stockpiled ridges of overburden ~~shall~~ will be leveled in such a manner as to have a minimum width of ten (10) feet at the top. Peaks of overburden ~~shall~~ will be leveled in such a manner as to have a minimum width of fifteen (15) feet at the top. The overburden piles ~~shall~~ will be reasonably prepared to control erosion using best management practices; such activities may include terracing, silt fences, chemical binders, seeding, mulching or slope reduction. ()

d. Topsoil Placement. Abandoned affected lands ~~shall~~**must** be covered with topsoil or other type of overburden that is conducive to plant growth, to the extent such materials are readily available, in order to achieve a stable uniform thickness. Excessive compaction of overburden and topsoil is to be avoided. Topsoil redistribution ~~shall~~**will** be timed so that seeding, or other protective measures, can be readily applied to prevent compaction and erosion. ()

e. Fill. Backfill and fill materials should be compacted in a manner to ensure stability. ()

05. Roads. ()

a. Roads must be constructed to minimize soil erosion, which may require restrictions on the length and grade of the roadbed, surfacing of roads with durable non-toxic material, stabilization of cut and fill slopes, and other techniques designed to control erosion. ()

b. All access and haul roads must be adequately drained. Drainage structures may include, but are not limited to, properly installed ditches, water-bars, cross drains, culverts, and sediment traps. ()

c. Culverts that are to be maintained for more than one (1) year must be designed to pass peak flows from not less than a twenty (20) year, twenty-four (24) hour precipitation event and have a minimum diameter of eighteen (18) inches. ()

d. Roads and water control structures will be maintained at periodic intervals as needed. Water control structures serving to drain roads must not be blocked or restricted in any manner to impede drainage or significantly alter the intended purpose of the structure. ()

e. Roads that will not be recontoured to approximate original contours upon abandonment will be cross-ditched and revegetated, as necessary, to control erosion. ()

f. Roads that are not abandoned and continue to be used under the jurisdiction of a governmental or private landowner, will comply with the nonpoint source sediment control provisions of Subsection 140.02 until the successor assumes control. ()

06. Backfilling and Grading. ()

a. Every operator who conducts mining or cyanidation facility operations which disturb less than two (2) acres shall, where possible, contour the disturbed land to its approximate previous contour. These lands ~~shall~~**must** be revegetated in accordance with Subsection 140.11. ()

b. An operator who conducts mining or cyanidation facility operations which disturb two (2) acres or more shall reduce all waste piles and depressions to the lowest practicable grade. This grade shall not exceed the angle of repose or maximum slope of natural stability for such waste or generate erosion in which sediment enters waters of the state. ()

c. Backfill and fill materials should be compacted in a manner to ensure mass and surface stability. ()

d. After the disturbed area has been graded, slopes will be measured for consistency with the approved reclamation plan or the permanent closure plan. ()

07. Disposal of Waste in Areas Other Than Mine Excavation. Waste material not used to backfill mined areas ~~shall~~**will** be transported and placed in a manner designed to stabilize the waste piles and control erosion. ()

a. The available disposal area should be on a moderately sloped, naturally stable area. The site should be near the head of a drainage to reduce the area of watershed above the fill. ()

b. All surface water flows within the disposal area ~~shall~~must be diverted and drained using accepted engineering practices such as a system of French drains, to keep water from entering the waste pile. These measures ~~shall~~must be implemented in accordance with standards prescribed by the Idaho Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code, and the Idaho Dam Safety Act, Sections 42-1710 through 42-1721, Idaho Code, if applicable. ()

c. The waste material not used in backfilling mined areas should be compacted, where practical, and should be covered and graded to allow surface drainage and ensure long-term stability. ()

d. The operator may, if appropriate, use terraces or slope reduction to stabilize the face of any fill. Slopes of the fill material should not exceed angle of repose or generate erosion in which sediment enters waters of the state. ()

e. Unless adequate drainage is provided through a fill area, all surface water above the fill ~~shall~~must be diverted away from the fill area into protected channels, and drainage shall not be directed over the unprotected face of the fill. ()

f. The operator shall conduct revegetation activities with respect to such waste piles in accordance with Subsection 140.11. ()

08. Settling Ponds; Minimum Criteria. ()

a. Sediment Storage Volume. Settling ponds shall provide adequate sediment storage capacity to achieve compliance with applicable water quality standards and protect existing beneficial uses, and may require periodic cleaning and proper disposal of sediment. ()

b. Water Detention Time. Settling ponds shall have an adequate theoretical detention time for water inflow and runoff entering the pond, but theoretical detention time may be reduced by improvements in pond design, chemical treatment, or other methods. ()

c. Emergency Spillway. In addition to the sediment storage volume and water detention time, settling ponds ~~shall~~must be designed to withstand and release storm flows as required by the Idaho Dam Safety Act, Section 42-1710 through 42-1721, Idaho Code, and Safety of Dams Rules, where applicable. ()

09. Tailings Facilities. All tailings ponds, dams, or other types of tailings facilities ~~shall~~must 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. ()

a. Design criteria, construction techniques, and decommission techniques for tailings dams and impoundments shall comply with the Idaho Dam Safety Act, Sections 42-1710 through 42-1721, Idaho Code, and applicable rules and regulations. ()

b. Topsoil ~~shall~~will be removed from the area to be affected by the impounding structure, tailings pond, or other tailings facilities in accordance with Subsection 140.04. ()

c. Abandonment and Decommissioning of Tailings Impoundments. ()

i. Dewatering. Tailings ponds ~~shall~~will be dewatered to the extent necessary to provide an adequate foundation for the approved post-mining use. ()

ii. Control of surface waters. Surface waters shall either be channeled around the reservoir and impoundment structure or through the reservoir and breached structure. Permanent civil structures ~~shall~~must be designed and constructed to implement either method of channeling. The structure shall provide for erosion-free passage of waters and adequate energy dissipation prior to entry into the natural drainage below the impounding

structure. ()

iii. Detoxification. Hazardous chemical residues within the tailings pond ~~shall~~ must be detoxified or covered with an adequate thickness of non-toxic material, to the extent necessary to achieve water quality standards in waters of the state. ()

iv. Reclamation. After implementing the required dewatering, detoxification, and surface drainage control measures, the reservoir and impounding structure ~~shall~~ will be covered with topsoil or other material conducive to plant growth, in accordance with Subsection 140.04. Where such soils are limited in quantity or not available, and upon approval by the Department, physical or chemical methods for erosion control may be used. All such areas are to be revegetated in accordance with Subsection 140.11, unless specified otherwise. ()

d. When the operator requests termination of its reclamation or permanent closure plan, pursuant to Section 150 of these rules, impoundment structures and any reservoirs retained as fresh water reservoirs after final reclamation or permanent closure ~~shall be~~ are required to conform with the Idaho Dam Safety Act, Sections 42-1710 through 42-1721, Idaho Code, if applicable. ()

10. Permanent Cessation and Time Limits for Planting. ()

a. Seeding and planting of affected lands or a permanently closed cyanidation facility should be conducted during the first normal period for favorable planting conditions after final seedbed preparation. ()

b. Reclamation activities, where possible, are encouraged to be concurrent with the mining operation and may be included in the approved reclamation plan. Final reclamation must begin within one (1) year after the mining operations have permanently ceased on a mine panel. If the operator permanently ceases disposing of overburden on a waste area or permanently ceases removing minerals from a pit or permanently ceases using a road or other affected land, the reclamation activity on each given area must start within one (1) year of such cessation, despite the fact that all operations as to the mine panel, which included such pit, road, overburden pile, or other affected land, has not permanently ceased. ()

c. An operator ~~shall be~~ is presumed to have permanently ceased mining operations on a given portion of affected land when no substantial amount of mineral or overburden material has been removed or overburden placed on an overburden dump, or no significant use has been made of a road during the prior three (3) years. If an operator does not plan to use an affected area for three (3) or more years but intends thereafter to use the affected area for mining operations and desires to defer final reclamation until after its subsequent use, the operator must submit a notice of intent and request for deferral of reclamation to the director, in writing. If the director determines that the operator plans to continue the operation within a reasonable period of time, the director shall notify the operator and may require actions to be taken to reduce degradation of surface resources until operations resume. If the director determines that use of the affected land for mining operations will not be continued within a reasonable period of time, the director may proceed as though the mining operation has been abandoned, but the operator will be notified of such decision at least thirty (30) days before taking any formal administrative action. ()

11. Revegetation Activities. ()

a. The operator shall select and establish plant species that can be expected to result in vegetation comparable to that growing on the affected lands or on a closed cyanidation facility prior to mining or cyanidation facility operations, respectively. Certified weed free seed should be used in revegetation. The operator may use available technical data and results of field tests for selecting seeding practices and soil amendments which will result in viable revegetation. These practices of selection may be included in an approved reclamation plan or permanent closure. ()

b. Unless otherwise specified in the approved reclamation or permanent closure plan, the success of revegetation efforts ~~shall be~~ is measured against the existing vegetation on site prior to the mining or cyanidation facility operation, or against an adjacent reference area supporting similar types of vegetation. ()

i. The ground cover of living plants on the revegetated area should be comparable to the ground cover

of living plants on the adjacent reference area for two (2) full growing seasons after cessation of soil amendment or irrigation. ()

ii. For purposes of this rule, ground cover ~~shall be~~ **is** considered comparable if it has, on the area actually planted at least seventy percent (70%) of the premining ground cover for the mined area or adjacent reference area; ()

iii. For locations with an average annual precipitation of more than twenty-six (26) inches, the director, in approving a reclamation or permanent closure plan, may set a minimum standard for success of revegetation as follows: Vegetative cover of seventy percent (70%) for two (2) full growing seasons in areas planted to herbaceous species only; or fifty percent (50%) vegetative cover for two (2) full growing seasons and six hundred (600) woody plants per acre in areas planted to a mixture of herbaceous and woody species. ()

iv. As used in this section, “herbaceous species” means grasses, legumes, and other forbs; “woody plants” means woody shrubs, trees, and vines; and “ground cover” means the area of the ground surface covered by the combined aerial parts of vegetation and the litter that is produced naturally on-site, expressed as a percentage of the total area measured. Rock surface areas will be excluded from this calculation. ()

v. For previously mined areas that were not reclaimed to the standards required by Section 140, and which are affected by the mining or cyanidation facility operations, vegetation should be established to the extent necessary to control erosion, but shall not be less than that which existed before redisturbance; and ()

vi. Vegetative cover shall not be less than that required to control erosion. ()

c. Introduced species may be planted if they are known to be comparable to previous vegetation, or if known to be of equal or superior use for the approved post-mining use of the affected land, or, if necessary, to achieve a quick, temporary cover for soil stabilization purposes. Species classified as poisonous or noxious weed species shall not be used in revegetation. ()

d. By mutual agreement of the director, the landowner, and the operator, a site may be converted to a different, more desirable or more economically suitable habitat. ()

e. Planting of grasses and forbs should be done in a manner which promotes rapid stabilization of the soil surface. Wherever terrain permits, grasses and forbs should be drilled or compacted into the ground using agricultural grass planting equipment or other seeders specifically designed for mine revegetation applications. Broadcast and hydroseeding may be used on areas where other methods are impractical or unavailable. ()

f. The operator should plant shrubs or shrub seed, as required, where shrub communities existed prior to mining. Shrub seed may be planted as a portion of a grass seed mix or planted as bare-root transplants after grass seeding. Where the landowner desires a specific land use such as grazing or cropland, shrubs will not be required in the revegetation species mix. Shrub lands undergoing revegetation with shrubs ~~shall~~ **will** be protected from erosion by vegetation, chemical, or other acceptable means during establishment of the shrubs. ()

g. Reforestation. Tree stocking of forestlands should meet the following criteria: ()

i. Trees that are adapted to the site should be planted on the area to be revegetated in a density which can be expected over time to yield a timber stand comparable to premining timber stands; ()

ii. Trees ~~shall~~ **will** be established for two (2) full growing seasons after cessation of any soil amendments and irrigation before they are considered to be established; and ()

iii. Forestlands undergoing revegetation with trees should be protected from erosion by vegetation, chemical binders, or other acceptable means during seedling establishment. ()

h. Revegetation is not required on the following areas: ()

i. Affected lands, or portions thereof, where planting is not practicable or reasonable because the soil is composed of excessive amounts of sand, gravel, shale, stone, or other material to such an extent to prohibit plant growth; ()

ii. Any mined area or overburden stockpiles proposed to be used in the mining operations for haulage roads, so long as those roads are not abandoned; ()

iii. Any mined area or overburden stockpile, where lakes are formed by rainfall or drainage runoff from adjoining lands; ()

iv. Any mineral stockpile; ()

v. Any exploration trench which will become a part of a pit or an overburden disposal area; and ()

vi. Any road which is to be used in mining operations, so long as the road is not abandoned. ()

i. **Mulching.** Mulch should be used on severe sites and may be required by the reclamation or permanent closure plan where slopes are steeper than three to one (3:1) or the mean annual rainfall is less than twelve (12) inches. When used, straw or hay mulch should be obtained from certified weed free sources. "Mulch" means vegetation residues or other suitable materials to aid in the stabilization of soil and soil moisture conservation which will provide a micro-climate more suitable for germination and growth on severe sites. Annual grains such as rye, oats, and wheat may be used as a substitute for mulch where they will provide adequate protection and will be replaced by permanent species within a reasonable length of time. ()

12. Petroleum-Based Products and Chemicals. All refuse, chemical and petroleum products and equipment should be stored and maintained in a designated location away from surface water and disposed of in such a manner as to prevent their entry into a waterway. ()

141. -- 149. (RESERVED)

150. TERMINATION OF A PLAN.

01. Terminate upon Request of the Operator. A reclamation plan shall terminate upon request of the operator, upon inspection by the director, and a determination that all reclamation activity has been completed to the standards specified in the plan, and following final approval by the director. Upon termination, the director will release the remaining financial assurance, notify the operator, and any authority to conduct any mining operations under the subject plan shall terminate. ()

02. Terminate a Permanent Closure Plan. The director shall terminate a permanent closure plan upon request of the operator, provided all the provisions and objectives of the permanent closure plan have been met, as determined by the director under Sections 111 and 112 of these rules. Upon a determination that permanent closure has been completed in accordance with the approved permanent closure plan and upon consultation with the DEQ that the operator's request to terminate a plan should be approved, the director will notify the operator that any authority to continue cyanidation operations shall cease and he will release the balance of the financial assurance in accordance with Subsection 120.20. ()

151. -- 154. (RESERVED)

155. FIVE (5) YEAR UPDATES AND PERIODIC INSPECTIONS.

01. Five (5) Year Updates. The Department may require operators to submit an update on their mining operation at least every five (5) years. The update will be on a Department form, and will be used to assist the Department in determining whether or not adjustments are needed for financial assurance or if a plan amendment is required due to a material change. Failure by an operator to complete the form and return it to the Department, or an operator providing false statements on the form, may result in the penalties in Section 47-1513(g), Idaho Code.

()

02. Right of Inspection. Authorized representatives of the Department have the right to enter upon lands affected or proposed to be affected by exploration, mining operations, or cyanidation facilities to determine compliance with the reclamation or permanent closure plans and these rules. Inspections will be conducted at reasonable times in the presence of the operator or his authorized representative. The operator shall make such a person available for the purpose of inspection. This rule does not prevent the Department from making an inspection of the site if the operator fails to make a representative available on request. ()

03. Frequency of Inspection. ()

a. Mining operations with an approved reclamation plan will be inspected at least once every five (5) years to determine compliance with the approved plan and adequacy of the financial assurance. Inspections may need to be more frequent due to the large size, rapid pace of mining, complexity of an operation, or high financial assurance. ()

b. Cyanidation facilities with an approved permanent closure plan will be inspected as often as is needed, but at least once a year. ()

156. -- 159. (RESERVED)

160. ENFORCEMENT AND FAILURE TO COMPLY.

01. Financial Assurance Forfeiture. Upon request by the director, the attorney general may institute proceedings to have the financial assurance for reclamation or permanent closure forfeited for violation of an order entered pursuant to Section 47-1513, Idaho Code and these rules. ()

02. Civil Penalty. An operator with no financial assurance, or an operator who violates these rules by performing an act which is not included in an approved reclamation plan or an approved permanent closure plan that is not subsequently approved by the Department, will be subject to a civil penalty as authorized by Section 47-1513(c), Idaho Code. ()

03. Injunctive Procedures. The director may seek injunctive relief and proceed with legal action, if necessary, to enjoin a mine operator or cyanidation facility operator who violates the provisions of the chapter, these rules, or the terms of an existing approved reclamation or permanent closure plan. Any such action will follow the procedures established in Section 47-1513, Idaho Code. ()

04. Appeal of Final Order. An operator dissatisfied with a final order of the Board may within sixty (60) days after receiving the order, file an appeal in accordance with Section 47-1514, Idaho Code. ()

161. -- 169. (RESERVED)

170. COMPUTATION OF TIME.

Computation of time will be based on calendar days. In computing any period of time prescribed by the chapter, the day on which the designated period of time begins is excluded. The last day of the period is included unless it is a Saturday, Sunday or legal holiday when the Department is not open for business. In such a case, the time period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. Intermediate Saturdays, Sundays or legal holidays are excluded from the computation when the period of prescribed time is seven (7) days or less. ()

171. -- 179. (RESERVED)

180. PUBLIC AND CONFIDENTIAL INFORMATION.

01. Information Subject to Disclosure. Information obtained by the Department pursuant to the chapter and these rules is subject to disclosure under Title 74, Chapter 1, Idaho Code ("Public Records Act").

()

02. Use by Board. Any plans, documents, or materials submitted as confidential and held as such shall not prohibit the Board, director, or Department from using the information in an administrative hearing or judicial proceeding initiated pursuant to Section 47-1514, Idaho Code. ()

03. Plans and BMPs. An operator will not unreasonably designate as confidential portions of reclamation or permanent closure plans which detail proposed BMPs to meet state surface and ground water quality standards. Confidential portions of reclamation or permanent closure plans may be shared with DEQ in its coordinating role under these rules, as reasonably necessary. ()

181. -- 189. (RESERVED)

190. DEPOSIT OF FORFEITURES AND DAMAGES.

All fees, penalties, forfeitures, and civil damages collected pursuant to the chapter, will be deposited with the state treasurer in the following accounts as appropriate: ()

01. Mine Reclamation Fund. The mine reclamation fund to be used by the director for mined land reclamation purposes and to administer the reclamation provisions of the chapter and these rules. ()

02. Cyanidation Facility Closure Fund. The cyanidation facility closure fund to be used by the director to complete permanent closure activities and to administer the permanent closure provisions of the chapter and these rules. ()

191. -- 199. (RESERVED)

200. COMPLIANCE OF EXISTING RECLAMATION PLANS.

01. Plans Approved Prior to 2019. Reclamation plans approved prior to July 1, 2019, or reclamation plans that have permanently ceased operations prior to July 1, 2019, are not subject to the 2019 legislative amendments to the chapter regarding financial assurance and post-closure. New reclamation plans or plan amendments received after July 1, 2019, will be subject to the 2019 legislative amendments to the chapter. ()

02. Plans Submitted in 2019. Reclamation plan applications submitted prior to July 1, 2019, but not yet approved, have until July 1, 2020 to submit post-closure plans and financial assurances as described in the 2019 legislative amendments to the chapter. ()

201. -- 999. (RESERVED)

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

DOCKET NO. 20-0000-2000F

NOTICE OF OMNIBUS RULEMAKING - ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency, the Idaho State Board of Land Commissioners, the Idaho Oil and Gas Conservation Commission (as to IDAPA 20.07.02), and the Idaho Board of Scaling Practices (as to IDAPA 20.06.01), and is now pending review by the 2021 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to:

- Sections 38-132 and 38-402, Idaho Code;
- Title 38, Chapter 12, including Section 38-1208, Idaho Code;
- Title 47, Chapters 3, 7, 8, 13, 15, 16 and 18, including Sections 47-314(8), 47-315(8), 47-328(1), 47-710, 47-714, and 47-1316, Idaho Code;
- Title 58, Chapters 1, 3, 6, 12 and 13, including Sections 58-104, 58-105, 58-127, and 58-304 through 58-312, Idaho Code;
- Title 67, Chapter 52, Idaho Code;
- Article IX, Sections 7 and 8 of the Idaho Constitution; and
- The Equal Footing Doctrine (Idaho Admission Act of July 3, 1890, 26 Stat. 215, Chapter 656).

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed fee rule and the text of the pending fee rule with an explanation of the reasons for the change.

This pending fee rule adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 20, Rules of the Idaho Department of Lands:

IDAPA 20

- 20.02.14, Rules for Selling Forest Products on State-Owned Endowment Lands
- 20.03.01, Rules Governing Dredge and Placer Mining Operations in Idaho
- 20.03.03, Rules Governing Administration of the Reclamation Fund
- 20.03.04, Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho
- 20.03.05, Riverbed Mineral Leasing in Idaho
- 20.03.08, Easements on State Owned Lands
- 20.03.09, Easements on State Owned Submerged Lands and Formerly Submerged Lands
- 20.03.13, Administration of Cottage Site Leases on State Lands
- 20.03.14, Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases
- 20.03.15, Rules Governing Geothermal Leasing on Idaho State Lands
- 20.03.16, Rules Governing Oil and Gas Leasing on Idaho State Lands
- 20.03.17, Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands
- 20.04.02, Rules Pertaining to the Idaho Forestry Act and Fire Hazard Reduction Laws

This pending fee rule also adopts and publishes changes to IDAPA 20.03.02, Rules Governing Mined Land

Reclamation. The previously approved and codified chapter of IDAPA 20.03.02 has been amended through the negotiated rulemaking process to incorporate changes required by the passing of HB141 during the 2019 legislative session. Following are the changes to the previously codified rule: including surface impacts of underground mines, setting fees for reclamation plans, incorporating water treatment and post-closure activities in reclamation plans as needed, requiring that all reclamation tasks in a plan be completed and covered by financial assurance, estimating actual cost of reclamation and post-closure activities, expanding the types of financial assurance, and reviewing every plan at least once every five years. Also, compliance with Executive Orders 2019-02 and 2020-01 required additional changes, and rulemaking by the Department of Environmental Quality on the Ore Processing by Cyanidation Rules (IDAPA 58.01.13) required parallel changes to IDAPA 20.03.02.

The text of the pending rule for IDAPA 20.03.02, Rules Governing Mined Land Reclamation, has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the September 16, 2020 Idaho Administrative Bulletin (Special Edition), Vol. 20-9SE, pages 985 - 1192. This pending rule is being adopted to fully implement the changes required by HB141. These rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho, to give mine operators in Idaho more choices in providing financial assurance, and to update Idaho's mining regulations. Changes were made to the proposed rule in order to provide more clarity, further implement Executive Order 2020-01, correct errors, respond to comments, and ensure continuity with IDAPA 58.01.13.

The Idaho Board of Scaling Practices adopts the following pending fee rule under IDAPA 20.06:

- 20.06.01, Rules of the Idaho Board of Scaling Practices

The Oil and Gas Conservation Commission adopts the following pending fee rule under IDAPA 20.07:

- 20.07.02, Rules Governing Conservation of Oil and Natural Gas in the State of Idaho

FEE SUMMARY:

Following is the fee summary for IDAPA 20.03.02, Rules Governing Mined Land Reclamation:

HB 141 passed during the 2019 legislative session and authorized application fees for reclamation plans. Fees were implemented through a temporary rule prior to August 1, 2019 as required by HB 141. The temporary rule was extended to allow time for more negotiation toward a proposed rule. The base fees in the 2019 temporary rule have not changed, but the pending rule allows additional application fees to be charged if an application processed under Section 069 of the rules is incomplete and increases the length of the review past 20 hours of staff time. For applications processed under Section 070 of the rules, a cost recovery agreement may be entered into instead of submitting the base application fee. The proposed fees reflect cost recovery for IDL administrative costs associated with the review and approval of new plans and amended existing plans that are reviewed within the required five-year period. The proposed fees align with fees charged by other mineral-producing states in the western United States for reclamation plan review, approval, and amendments. The fees are estimated to generate annual revenue of approximately \$27,000 and will be placed into a dedicated account authorized under Idaho Code § 47-1513(f)(1). These funds are expected to offset additional IDL expenses anticipated with implementation of the five-year plan review process and increase in plan inspections now required under Idaho Code § 47-15.

For the following rule chapters, this rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Idaho Legislature.

The following is a specific description of the fees or charges:

- 20.02.14 – Stumpage payments and associated bonding for removal of state timber from endowment land pursuant to timber sales. This charge is being imposed pursuant to Sections 58-104, 58-105 and 58-127, Idaho Code.
- 20.03.01 – Application fee, amendment fee, assignment fee, and inspection fee for all dredge and placer permits in the state of Idaho. This fee is being imposed pursuant to Sections 47-1316 and 47-1317, Idaho Code.
- 20.03.03 – Annual payment for Reclamation Fund participation. This charge is being imposed pursuant to Section 47-1803, Idaho Code.

- 20.03.04 – Application fees for encroachment permits and assignments and deposits toward the cost of newspaper publication. This fee is being imposed pursuant to Sections 58-127 and 58-1307, Idaho Code.
- 20.03.05 – Fees for applications, advertising applications, and approval of assignments for riverbed mineral leases and exploration locations. This fee is being imposed pursuant to Section 47-710, Idaho Code.
- 20.03.08 – Application fee, easement consideration fee, appraisal costs, and assignment fee for easements on state-owned lands. This fee is being imposed pursuant to Sections 58-127, 58-601, and 58-603, Idaho Code.
- 20.03.09 – Administrative fee, appraisal costs, and assignment fee for easements on state-owned submerged lands and formerly submerged lands. This fee is being imposed pursuant to Sections 58-104, 58-127 and 58-603, Idaho Code.
- 20.03.13 – Annual rental payment paid to the endowment for which the property is held. This charge is being imposed pursuant to Section 58-304, Idaho Code.
- 20.03.14 – Lease application fee, full lease assignment fee, partial lease assignment fee, mortgage agreement fee, sublease fee, rental payment, late rental payment fee, minimum lease fee, and lease payment extension request fee on state endowment trust lands. This fee or charge is being imposed pursuant to Section 58-304, Idaho Code.
- 20.03.15 – Application fee, assignment fee, late payment fee, royalty payments, and annual rental payment for geothermal leases on state-owned lands. This fee or charge is being imposed pursuant to Sections 47-1605 and 58-127, Idaho Code.
- 20.03.16 – Exploration permit fee, nomination fee, processing fee, royalty payments, and annual rental payment for oil and gas leases on endowment lands. This fee or charge is being imposed pursuant to Sections 47-805 and 58-127, Idaho Code.
- 20.03.17 – Application fee, rental rate, and assignment fee for leases on state-owned submerged lands and formerly submerged lands. This fee is being imposed pursuant to Sections 58-104, 58-127 and 58-304, Idaho Code.
- 20.04.02 – Fee imposed upon the harvest and sale of forest products to establish hazard management performance bonds for the abatement of fire hazard created by a timber harvest operation, and fees imposed upon contractors for transferring fire suppression cost liability back to the State. This fee or charge is being imposed pursuant to Sections 38-122 and 38-404, Idaho Code.
- 20.06.01 – Scaling assessment fee paid to a dedicated scaling account for all scaled timber harvested within the state of Idaho; administrative fees for registration, renewal, and transfer of log brands; fees for testing and issuance of a temporary scaling permit, specialty scaling license, and standard scaling license; fee to renew a specialty or standard scaling license; and fee for a requested check scale involving a scaling dispute. This fee is being imposed pursuant to Section 38-1209, Idaho Code.
- 20.07.02 – Bonding for oil and gas activities in Idaho and application fees for seismic operations; permit to drill, deepen or plug back; multiple zone completions; well treatment; pits and directional deviated wells. This fee or charge is being imposed pursuant to Sections 47-315(5)(e) and 47-316, Idaho Code.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the fees charged under IDAPA 20.03.02 are expected to cover the additional costs imposed by HB141, and none of the other rule chapters have changed their fees.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Scott Phillips, 208-334-0294.

Dated this 18th day of November, 2020.

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