

From: [Will Tiedemann](#)
To: [Andy Mork, PG](#); [Rulemaking](#)
Cc: [Josh Johnson](#)
Subject: ICL comments RE Docket 20-0302-2401 IDAPA 20.03.02
Date: Monday, April 21, 2025 2:48:56 PM
Attachments:

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Hello,

Please see the attached letter regarding comments for Docket 20-0302-2401/ IDAPA 20.03.02.

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April 21, 2025

Idaho Department of Lands
Attn: Andy Mork – Rulemaking
P.O. Box 83720
Boise, Idaho 83720-0050
rulemaking@idl.idaho.gov

RE: Rules Governing Mined Land Reclamation (IDAPA 20.03.02)

Dear Idaho Department of Lands:

I am writing on behalf of the Idaho Conservation League (ICL) to submit comments on the on-going, Zero-Based negotiated rulemaking process for IDAPA 20.03.02 Rules Mined Land Reclamation (the Rules). Since 1973, the Idaho Conservation League has had a long history of involvement with the environmental protection of Idaho's lands and waters. As Idaho's largest state-based conservation organization we represent over 25,000 members and supporters who have a deep personal interest in ensuring that our public lands and water quality is protected throughout the state.

We thank you for the opportunity to submit comments and ask that you please send us any response to public comments on this opportunity from the Idaho Department of Lands (IDL). Please feel free to contact us if you have any questions or require additional information.

Sincerely,

Will Tiedemann
Conservation Associate
Idaho Conservation League
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Inspection Requirements

Under Draft Rule #2, subsection 155.03a has been revised to remove the requirement to inspect mining operations with an approved reclamation plan every five years and instead “periodically based on priority and resource availability bases”. During the April 16, 2025 public negotiated rulemaking meeting, ICL asked about the basis for this change (note, this revision does not appear in Draft Rule #1 published in 2024) and IDL staff responded by noting that a requirement to inspect mining operations with reclamation plans every five years does not appear in Idaho Statute. Idaho Statute Title 47 Chapter 15 Mined Land Reclamation does in fact say little regarding the frequency of inspections with Idaho Statute 47-1505(4) simply giving IDL the power *“To enter upon affected lands at all reasonable times, for the purpose of inspection, to determine whether the provisions of this chapter have been complied with.”*

As stated on the IDL webpage for this rulemaking, “Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter is scheduled for a comprehensive review in 2025 with the goal of simplifying the rules for increase (*sic*) clarity and ease of use.” While the general spirit of Zero-Based Regulation (ZBR) rulemaking has historically been carried out with this directive, it is important to review the exact language of Executive Order 2020-01 to understand its requirements. Under instructions for “Ongoing Review Process for Existing Rules”, subsection 4.a states, *“The agency must perform a retrospective analysis of the rule chapter to determine whether the benefits the rule intended to achieve are being realized, whether those benefits justify the costs of the rule, and whether there are less restrictive alternatives to accomplish the benefits. This analysis should be guided by the legislative intent articulated in the statute or act giving the agency the authority to promulgate the rule.”*

Given IDL’s response during the April 16th public negotiated rulemaking, it is unclear whether the current modification to subsection 155.03a complies with instructions of Executive Order 2020-01. Past rulemaking evidence shows that subsection 155.03a, as originally written, was deliberately written to require inspections every five years versus any other discretionary time frame.¹ Inspecting mining operations every five years provides a concrete and accountable method for ensuring they comply with issued reclamation plans. Despite this, IDL has not currently provided any discussion or analysis on whether the benefits of being required to inspect mining operations every five years are being realized, whether those benefits justify the costs of the rule, and whether there are less restrictive alternatives to accomplish the benefit.

It is ICL’s understanding that there are approximately 1,500 to 1,600 approved reclamation Pplans on file with IDL. That means under the current language of subsection 150.03(a), IDL must inspect, on average, more than one operation per working day. Given the amount of

¹ Under Docket 20-0302-1901 in 2019, IDL updated IDAPA 20.03.02 to incorporate HB 141. IDL’s rulemaking page for Docket 20-0302-1901 shows five draft versions of IDAPA 58.03.02. Section 155.03(a) first appears in draft #1 as such: “a. Mining operations with an approved reclamation plan **should** be inspected at least once every five years to determine compliance with the approved plan and adequacy of reclamation bonding. Inspections may need to be more frequent due to the large size, rapid pace of mining, complexity of an operation, or high bond amount (emphasis added).” It remains unchanged until draft version #5 (no margin comments provide any additional context in any previous draft version) when it was modified to state, “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.”

resources needed to realize the benefits of such frequent inspections, it is fair to question if the cost/benefit of such frequent inspections may not be justified. This is especially true given the different levels of impact the wide variety of mining operations have in Idaho. A small gravel mining operation on a few acres will have very different impacts than a large phosphate open-pit operation covering hundreds of acres. To be realistic of these differences and to strike an appropriate cost/benefit balance, ICL proposed the following language modification to subsection 150.03(a):

a Mining operations with an approved reclamation plan including reclamation of a tailing facility² or 150 permitted acres or more will be inspected at least once every five (5) years to determine compliance with the approved plan and adequacy of the financial assurance. Mining operations not including reclamation of a tailings storage facility or including less than 150 permitted acres will be inspected periodically on a priority and resource availability basis. Mine permitted under Section 70 and 71 of these rules ~~inspections may require more frequent~~ inspection ~~need to be more frequent~~ due to the large size, rapid pace of mining, complexity of an operation, or high financial assurance.

Requiring mines with a tailings facility or permitted acres of 150 acres or more to be inspected at least every five years provides the public the assurance and benefit that the largest and potentially most impactful mining operations remain in compliance with mined land reclamation requirements. The benefits of including mine operations with tailings facilities within the five year inspection requirement is fairly obvious given the fact they are designed to store toxic wastes indefinitely. A review of Idaho's largest surface mines shows that the selected size of 150 permitted acres is representative of the type of surface mines that currently and historically present environmental challenges and impact including mines within the phosphate patch and the Blackbird Mine.

We respectfully request IDL provide analysis on the benefits and cost of the current subsection 150.03(a) inspection requirements and consider the proposed language above.

Zero-Based Prospective Analysis

Subsection 4b of Executive Order 2020-10 requires, *"The agency must publish a notice of intent to promulgate rules and hold, at a minimum, two public hearings that are designed to maximize public participation in the rulemaking process. A copy of the retrospective analysis must be published on the agency's website prior to the public hearings."*³ Currently the "Zero-based Prospective Analysis" on the IDL rulemaking website is dated 2/23/2024 and has

² Currently, IDAPA 20.03.02 does not include a definition for "tailings facility" but subsection 140.09 does discuss applicable requirements. Idaho Statute 47-1503(28) includes a definition for "tailings pond". Alignment of definitions may be beneficial.

³ Technically, Executive Order 2020-01 denoted the use of a "prospective" analysis when proposing entirely new rules during 2020 and using a "retrospective" analysis when reviewing existing rules during the on-going ZBR process. However, standard ZBR rulemaking practice for the last several years appears to use a single review form titled "prospective analysis" only.

only completed sections 1, 2, and 5. Since the form itself notes to “Fill out entire form to the best of your ability, unless submitting a Notice to Negotiate only fill out 1, 2, and 5”, it appears the form has not been updated since this rulemaking was submitted for Notice to Negotiate in 2024.

We respectfully request the Zero-Based Prospective Analysis form be fully completed per Subsection 4b of Executive Order 2020-10.

Statutory Requirement to Review Reclamation Plans

Subsection 155.01 states, *“The Department may require operators to submit an update on their mining operation at least every five (5) years”* and remains unchanged from the existing version of IDAPA 20.03.02. However, it fails to capture the complete requirements of its overriding statute. Idaho Statute 47-1508(e) states, *“At least once every five (5) years, the board shall review reclamation plans and revise if necessary to meet the requirements of sections 47-1506, 47-1509, 47-1510, and 47-1511, Idaho Code, when there is a material change in the reclamation plan. As part of this review, the board shall revise the amount, terms, and conditions of any financial assurance when there is a material change in the reclamation plan or a material change in the estimated reasonable costs of reclamation determined pursuant to section 47-1512, Idaho Code. Any such revision shall apply only to the affected lands covered by the material change.”*

Currently subsection 155.01 does not include the requirement for IDL to explicitly review reclamation plans every five years or the requirement to revise the amount, terms, and conditions of any financial assurance when there is a material change. As such we proposed the following changes to Subsection 155.01:

01 Five (5) Year Updates. At least once every five (5) years, [the Department shall review reclamation plans and revise if necessary to meet the requirements of these Rules when there is a material change in the reclamation plan. To this end,](#) 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.