

STATE BOARD OF LAND COMMISSIONERS

July 16, 2019
Regular Agenda

Subject

Adoption of a Temporary Rule to Implement House Bill 141 (Amendments to Idaho Surface Mining Act)

Question Presented

Shall the Board adopt the Temporary Rule for IDAPA 20.03.02, with an effective date of July 16, 2019.

Background

The Idaho Department of Lands (Department) is responsible for providing regulatory oversight of mining activities on state, federal, and private lands in Idaho pursuant to Title 47, Chapter 15, Idaho Code (Act), and IDAPA 20.03.02, *Rules Governing Exploration, Surface Mining, and Closure of Cyanidation Facilities*.

During the 2019 regular session, the legislature passed House Bill 141 (Attachment 1), which significantly changed the Act. The Act is now titled the Idaho Mined Land Reclamation Act, and became effective on July 1, 2019.

The Act requires temporary rules to be implemented by August 1, 2019, and contains several significant changes:

- Requires reclamation plans for the surface impacts of underground mines;
- Allows the Department to collect reasonable fees for reclamation plans;
- Expands reclamation plans to include post-closure activities, such as water treatment;
- Provides requirements for performing all reclamation tasks described in a plan and for submitting financial assurance that covers all tasks within the plan;
- Includes actual cost estimation of reclamation activities;
- Adds additional types of financial assurance to give operators flexibility needed for long-term post-closure activities;
- Requires the Department to review every plan at least once every five years.

The Department received Land Board approval in March 2019 to develop a Temporary Rule that implements the amendments to the Act, and to enter negotiated rulemaking to formulate a Proposed Rule.

Discussion

The Department has done extensive research for the Temporary Rule (Attachment 2) with 70 documents posted to its website covering a total of over 2,400 pages of material. Ten negotiated rulemaking meetings were held in Boise, Pocatello, Challis, Coeur d'Alene, and McCall in May and June, and 110 non-Department attendees signed in at these meetings. Participants included the Idaho Mining Association, Department of Environmental Quality, Environmental Protection Agency, United States Forest Service, Bureau of Land Management, Idaho Conservation League, Association of General Contractors, and several mining operators and members of the public.

The Department appreciates the broad participation during the rulemaking meetings. Many changes to the rule text have been made based on input from the participants, and the Department thanks individuals for assisting with this complicated rulemaking. During the two-month rulemaking, the Department received over 60 written comments. These comments, the draft rule text, reference materials, and other information is posted to the Department's rulemaking web page.

While some additional work is needed through continued negotiated rulemaking before moving forward with a Proposed Rule, the Temporary Rule presented today can implement changes to the Act that resulted from House Bill 141 until negotiations are completed.

Several topics were covered in the rulemaking. Following are details on the topics of fees, underground mines, financial assurance, and requiring plans to address potential water quality related impacts.

The application fees in the Temporary Rule are provided below from Section 068 on page 10 of the rule.

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)

Over the last seven years, 78% of the reclamation plans processed were sand and gravel, decorative stone, or similar plans reviewed under Section 069 and over five acres in size; 19% of the plans processed were five acres or less in size. Based on a 2016 workload analysis and current cost data, the average cost for the Department to process a reclamation plan under Section 069 is \$634. The graduated application fees acknowledge that smaller plans take less effort to process, and larger or more complicated plans take more effort to process. Additional work is needed in developing a Proposed Rule to more accurately determine the costs of processing plans under Section 070 and how best to tailor the fees to those costs.

The fees in the Temporary Rule are in the range of those charged by other western states with similar mining activity.

For underground mines, the rules will not apply to existing underground mines until a mine exceeds its existing surface disturbance by 50% or more after July 1, 2019. That requirement is in House Bill 141. For new underground mines, or mines that meet the 50% expansion, they will need to apply for a reclamation plan under Section 070 of the rules. In addition to the requirements previously applied to surface mines, plans for underground mines will need to show the location and dimension of each underground mine opening on the surface and describe how the openings will be secured during reclamation to eliminate the safety hazard.

Changes to Sections 120 and 121 (pages 23 to 29) regarding how to determine financial assurance are included in the Temporary Rule. Actual cost calculations are required for all plans over five acres in size, and those calculations will be subject to review and approval by the Department. Indirect costs must be included, as is standard practice for other state and federal agencies. Salvage value is not allowed for structures or fixtures, which is also a standard practice.

Most of the changes regarding types of financial assurance in Section 122 (pages 29 to 33) are borrowed from regulations of other state and federal agencies. Surety bonds and certificates of deposit have improved requirements. New types of financial assurance are described, including time deposit receipts, real property, trusts, and corporate guarantees. The requirements in the Temporary Rule for these instruments are fairly thorough. Many comments were received objecting to the use of corporate guarantees, or to specific requirements for them in the rules. This form of financial assurance is, however, specifically authorized by House Bill 141. With the financial tests and other sideboards in the Temporary Rule, the Department believes the correct balance is met between following legislative intent and minimizing the risk of default with a corporate guarantee.

The issues related to maintaining water quality standards and addressing post-closure require the most additional work during continued negotiated rulemaking to develop a Proposed Rule. Sections 47-1506(a)(1)(vii) and (viii), Idaho Code, now require an operator to include in their reclamation plan:

"(vii) A description of foreseeable water quality impacts from mining operations and proposed water management activities to comply with water quality requirements.

(viii) A description of post-closure activities."

These paragraphs replace two paragraphs that previously only required an operator to address these issues for nonpoint sources of water quality impacts and acid rock drainage. The Department believes that a geochemical characterization of waste rock, tailings, and other materials is needed for an operator to show how their mine design will comply with the new language in the statute. Consensus was not achieved on this issue. For the

Temporary Rule, the Department left existing language regarding acid rock drainage intact. The statute can be implemented as it is until agreement can be reached on a Proposed Rule.

In addition to the above changes due to House Bill 141, some rule changes were made to comply with the Red Tape Reduction Act. Definitions repeated from statute are deleted, and a reference is made to the statute to guide the reader to the corresponding definition(s). Some clarification and reorganization was also done throughout the rule to make it easier to follow. More consolidation for a Proposed Rule may be possible, and will be considered during additional negotiations.

In conclusion, the Department believes this Temporary Rule can be used to implement the changes to the Idaho Mined Land Reclamation Act on a short-term basis. If approved by the Land Board, the Department will submit the *Notice of Adoption of Temporary Rule* to the Office of the Administrative Rules Coordinator for publication in the September issue of the Administrative Bulletin. The Department will continue negotiated rulemaking to develop a Proposed Rule that addresses the outstanding concerns of the rulemaking participants.

Recommendation

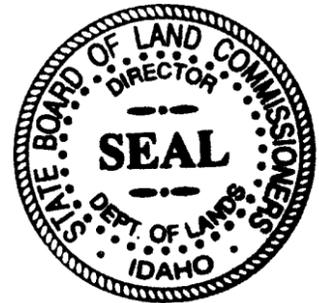
Adopt the Temporary Rule for IDAPA 20.03.02, with the amended chapter title of *Rules Governing Mined Land Reclamation* and an effective date of July 16, 2019.

Board Action

A motion was made by Controller Woolf that the Board approve the Department recommendation to adopt the Temporary Rule for IDAPA 20.03.02, with the amended chapter title of *Rules Governing Mined Land Reclamation* and an effective date of July 16, 2019. Secretary Denney seconded the motion. The motion carried on a vote of 4-0.

Attachments

1. House Bill 141 with Statement of Purpose and Fiscal Note
2. Temporary Rule Text



STATEMENT OF PURPOSE

RS26746

The Surface Mining Act was enacted in 1971 with the primary purpose to protect the taxpayers and the lands of Idaho by providing for reclamation activities and reclamation bonds for lands disturbed by surface mining activities in the state. The purpose of these proposed changes is to more accurately reflect current industry and regulatory practices. The changes include addressing the surface impacts of underground mines and providing for actual cost estimation of reclamation and related environmental activities. The legislation also includes updating financial assurance methods, requiring financial assurance for reclamation and long-term post closure management activities, requiring reclamation plan and financial assurance reviews, and ensuring that there will be no duplication in financial assurances between government agencies. Also included in the legislation is the ability for the department to require reasonable fees to pay for any additional workload associated with the proposed changes.

FISCAL NOTE

With the inclusion of fee language, the proposed amendments will have no impact to the state General Fund.

Contact:

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Senator James Guthrie
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Representative Dorothy Moon
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DISCLAIMER: This statement of purpose and fiscal note are a mere attachment to this bill and prepared by a proponent of the bill. It is neither intended as an expression of legislative intent nor intended for any use outside of the legislative process, including judicial review (Joint Rule 18).

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 141

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

1 RELATING TO MINES; AMENDING THE HEADING FOR CHAPTER 15, TITLE 47, IDAHO CODE;
2 AMENDING SECTION 47-1501, IDAHO CODE, TO PROVIDE THAT THE PURPOSE OF
3 SPECIFIED LAW SHALL ALSO APPLY TO UNDERGROUND MINES AND TO MAKE TECH-
4 NICAL CORRECTIONS; AMENDING SECTION 47-1502, IDAHO CODE, TO REVISE A
5 SHORT TITLE, TO REVISE PROVISIONS REGARDING APPLICABILITY, AND TO MAKE
6 TECHNICAL CORRECTIONS; AMENDING SECTION 47-1503, IDAHO CODE, TO REVISE
7 DEFINITIONS, TO DEFINE TERMS, AND TO MAKE TECHNICAL CORRECTIONS; AMEND-
8 ING SECTION 47-1505, IDAHO CODE, TO REVISE THE DUTIES AND POWERS OF THE
9 BOARD OF LAND COMMISSIONERS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING
10 SECTION 47-1506, IDAHO CODE, TO REVISE OPERATOR DUTIES; AMENDING SEC-
11 TION 47-1507, IDAHO CODE, TO REVISE REFERENCE TO MINING OPERATIONS RE-
12 GARDING RECLAMATION PLANS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING
13 SECTION 47-1508, IDAHO CODE, TO REVISE REFERENCE TO MINING OPERATIONS
14 REGARDING AMENDED AND SUPPLEMENTAL PLANS, TO PROVIDE FOR REVIEW OF
15 RECLAMATION PLANS AND PERMANENT CLOSURE PLANS, TO PROVIDE FOR FEES, TO
16 PROVIDE THAT CERTAIN DETERMINATIONS SHALL BE CONSIDERED FINAL ORDERS,
17 AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 47-1509, IDAHO
18 CODE, TO REVISE REFERENCE TO MINING OPERATIONS REGARDING PROCEDURES IN
19 RECLAMATION, TO REVISE SPECIFIED RECLAMATION ACTIVITIES, AND TO MAKE
20 TECHNICAL CORRECTIONS; AMENDING SECTION 47-1510, IDAHO CODE, TO REVISE
21 REFERENCE TO MINING OPERATIONS REGARDING VEGETATION PLANTING AND TO
22 MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 47-1511, IDAHO CODE, TO
23 REVISE REFERENCE TO MINING OPERATIONS REGARDING RECLAMATION ACTIVI-
24 TIES AND TIME LIMITATIONS AND TO MAKE A TECHNICAL CORRECTION; AMENDING
25 SECTION 47-1512, IDAHO CODE, TO PROVIDE FOR FINANCIAL ASSURANCE AND
26 TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 47-1513, IDAHO CODE,
27 TO REVISE PROVISIONS REGARDING AN OPERATOR'S FAILURE TO COMPLY AND TO
28 MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 47-1516, IDAHO CODE, TO
29 REVISE REFERENCE TO MINED LAND REGARDING THE DEPOSIT OF FORFEITURES
30 AND DAMAGES; AMENDING SECTION 47-1517, IDAHO CODE, TO REVISE REFERENCE
31 TO MINING OPERATIONS REGARDING COMPLIANCE WITH CERTAIN STATUTES AND
32 REGULATIONS; AND AMENDING SECTION 47-1518, IDAHO CODE, TO PROVIDE AN
33 EXEMPTION FROM RECLAMATION FOR CERTAIN SURFACE MINE OPERATORS, TO PRO-
34 VIDE FOR APPLICABILITY, AND TO MAKE A TECHNICAL CORRECTION.
35

36 Be It Enacted by the Legislature of the State of Idaho:

37 SECTION 1. That the Heading for Chapter 15, Title 47, Idaho Code, be,
38 and the same is hereby amended to read as follows:

39 CHAPTER 15

40 ~~SURFACE MINING~~ MINED LAND RECLAMATION

1 SECTION 2. That Section 47-1501, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 47-1501. PURPOSE OF CHAPTER. It is the purpose of this chapter to pro-
4 vide for the protection of the public health, safety and welfare, through
5 measures to reclaim the surface of all the lands within the state disturbed
6 by exploration and surface and underground mining operations and measures
7 to assure the proper closure of cyanidation facilities and thereby conserve
8 natural resources, aid in the protection of wildlife, domestic animals, and
9 aquatic resources, and reduce soil erosion.

10 SECTION 3. That Section 47-1502, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 47-1502. SHORT TITLE. This act ~~may shall~~ be known and may be cited as
13 "the "Idaho surface mining mined land reclamation act." The reclamation pro-
14 visions of this act shall not apply to ~~surface~~ mining operations regulated by
15 the Idaho dredge and placer mining protection act, nor shall such provisions
16 apply to any workings at an underground mine below the surface.

17 SECTION 4. That Section 47-1503, Idaho Code, be, and the same is hereby
18 amended to read as follows:

19 47-1503. DEFINITIONS. Wherever used or referred to in this chapter,
20 unless a different meaning clearly appears from the context:

21 (1) "Board" means the state board of land commissioners or such depart-
22 ment, commission, or agency as may lawfully succeed to the powers and duties
23 of such board.

24 (2) "Cyanidation" means the method of extracting target precious met-
25 als from ores by treatment with cyanide solution, which is the primary leach-
26 ing agent for the extraction.

27 (3) "Cyanidation facility" means that portion of a new ore processing
28 facility, or a material modification or a material expansion of that por-
29 tion of an existing ore processing facility, that utilizes cyanidation and
30 is intended to contain, treat, or dispose of cyanide-containing materials
31 including spent ore, tailings, and process water.

32 (4) "Director" means the head of the department of lands or such officer
33 as may lawfully succeed to the powers and duties of said director.

34 (5) "Affected land" means the land area included in overburden disposal
35 areas, mined areas, mineral stockpiles, roads, tailings ponds and other ar-
36 eas disturbed ~~at on~~ the surface ~~mining operation site~~ of mining operations.

37 (6) "Mineral" ~~shall~~ means coal, clay, stone, sand, gravel, metallifer-
38 ous and nonmetalliferous type of ores, and any other similar solid material
39 or substance of commercial value to be excavated from natural deposits on or
40 in the earth.

41 (7) "~~Surface~~ Mining operations" means the activities performed on a
42 the surface of a surface or underground mine in the extraction of minerals
43 from the ground, including the excavating of pits, removal of minerals, dis-
44 posal of overburden, and the construction of haulage roads, exclusive of ex-
45 ploration operations, except that any exploration operations which, exclu-
46 sive of exploration roads, (a) result during a period of twelve (12) consecu-

1 tive months in more than five (5) contiguous acres of newly affected land, or
 2 (b) which, exclusive of exploration roads, result during a period of twelve
 3 (12) consecutive months in newly affected land consisting of more than ten
 4 (10) noncontiguous acres, if such affected land constitutes more than fif-
 5 teen percent (15%) of the total area of any circular tract ~~which that~~ in-
 6 cludes such affected land, shall be deemed to be a surface mining operation
 7 for the purposes of this chapter.

8 (8) "Exploration operations" means activities performed on the surface
 9 of lands to locate mineral bodies and to determine the mineability and mer-
 10 chantability thereof.

11 (9) "Surface mine" means an area where minerals are extracted by remov-
 12 ing the overburden lying above and adjacent to natural deposits thereof and
 13 mining directly from the natural deposits thereby exposed.

14 (10) "Underground mine" means an area where minerals are extracted from
 15 beneath the surface of the ground by means of an adit, shaft, tunnel, de-
 16 cline, portal, bore hole, drill hole for solution mining, or such other means
 17 of access beneath the surface of the ground, other than a pit.

18 (11) "Mined area" means surface of land from which overburden, waste
 19 rock, or minerals have been removed other than by drilling of exploration
 20 drill holes.

21 (11~~2~~) "Overburden" or "waste rock" means material extracted by an oper-
 22 ator ~~which that~~ is not a part of the material ultimately removed from a sur-
 23 face mine or underground mine and marketed by an operator, exclusive of min-
 24 eral stockpiles.

25 (12~~3~~) "Overburden disposal area" means land surface upon which overbur-
 26 den or waste rock is ~~piled~~ placed or planned to be ~~piled~~ placed.

27 (13~~4~~) "Exploration drill holes" means holes drilled from the surface to
 28 locate mineral bodies and to determine the mineability and merchantability
 29 thereof.

30 (14~~5~~) "Exploration roads" means roads constructed to locate mineral
 31 bodies and to determine the mineability and merchantability thereof.

32 (15~~6~~) "Exploration trenches" means trenches constructed to locate min-
 33 eral bodies and to determine the mineability and merchantability thereof.

34 (16~~7~~) "Peak" means a projecting point of overburden.

35 (18) "Significant change" means, for an underground mine, a fifty per-
 36 cent (50%) increase in the areal extent of the disturbed affected land.

37 (17~~9~~) "Mine panel" means that portion of a mine designated by an opera-
 38 tor as a panel of a surface mine or the surface effects of an underground mine
 39 on the map submitted pursuant to section 47-1506, Idaho Code.

40 (18~~20~~) "Mineral stockpile" means minerals extracted during surface
 41 mining operations and retained at the surface mine for future rather than
 42 immediate use.

43 (19~~21~~) "Permanent closure plan" means a description of the procedures,
 44 methods, and schedule that will be implemented to meet the intent and pur-
 45 poses of this chapter in treating and disposing of cyanide-containing materi-
 46 als including spent ore, tailings, and process water and in controlling
 47 and monitoring discharges and potential discharges for a reasonable period
 48 of time based on site-specific conditions.

49 (20~~2~~) "Pit" means an excavation created by the extraction of minerals or
 50 overburden during at a surface mining operations mine.

1 (213) "Ridge" means a lengthened elevation of overburden.

2 (224) "Road" means a way constructed on a surface mine for the passage of
3 vehicles, including the bed, slopes and shoulders thereof.

4 (235) "Operator" means any person or persons, any partnership, limited
5 partnership, ~~or~~ corporation, or limited liability company, or any associ-
6 ation of persons, either natural or artificial, including, but not limited
7 to, every public or governmental agency engaged in surface mining operations
8 or exploration operations or in operating a cyanidation facility, whether
9 individually, jointly, or through subsidiaries, agents, employees, or con-
10 tractors, and shall mean every governmental agency owning or controlling the
11 use of any surface mine when the mineral extracted is to be used by or for the
12 benefit of such agency. It shall not include any such governmental agency
13 with respect to those surface mining or exploration operations as to which it
14 grants mineral leases or prospecting permits or similar contracts, but noth-
15 ing herein shall relieve the operator acting pursuant to a mineral lease,
16 prospecting permit or similar contract from the terms of this chapter.

17 (246) "Hearing officer" means that person selected by the board to hear
18 proceedings under section 47-1513, Idaho Code.

19 (257) "Final order of the board" means a written notice of rejection,
20 the order of a hearing officer at the conclusion of a hearing, or any other
21 order of the board where additional administrative remedies are not avail-
22 able.

23 (268) "Tailings pond" means an area on a the surface mine of a mining op-
24 eration enclosed by a man-made or natural dam onto which has been discharged
25 the waste material resulting from the primary concentration of minerals in
26 ore excavated from a surface or underground mine.

27 (29) "Financial assurance" means monetary assurances in such form and
28 amount as are necessary for the board or a third party to perform the reclama-
29 tation activities required in this chapter.

30 (30) "Post-closure" means a description of the procedures, methods,
31 and schedule for monitoring, care and maintenance, and water management that
32 will be implemented on a mine panel after cessation of mining operations for
33 a period not to exceed thirty (30) years unless the board determines a longer
34 period is necessary.

35 SECTION 5. That Section 47-1505, Idaho Code, be, and the same is hereby
36 amended to read as follows:

37 47-1505. DUTIES AND POWERS OF BOARD. In addition to the other duties
38 and powers of the board prescribed by law, the board is granted and shall be
39 entitled to exercise the following authority and powers and perform the fol-
40 lowing duties:

41 (1) To administer and enforce the provisions of this chapter and the
42 rules and orders promulgated thereunder as provided in this chapter.

43 (2) To conduct and promote the coordination and acceleration of re-
44 search, studies, surveys, experiments, demonstrations and training in
45 carrying out the provisions of this chapter. In carrying out the activities
46 authorized by this section, the board may enter into contracts with and make
47 grants to institutions, agencies, organizations and individuals, and shall
48 collect and make available any information obtained therefrom.

1 (3) To adopt and promulgate reasonable rules respecting the adminis-
 2 tration of this chapter and such rules as may be necessary to carry out the
 3 intent and purposes of this chapter, provided that no rules shall be adopted
 4 ~~which that~~ require reclamation activities in addition to those set forth in
 5 this chapter. All such rules shall be adopted in accordance with and subject
 6 to the provisions of chapter 52, title 67, Idaho Code.

7 (4) To enter upon affected lands at all reasonable times, for the pur-
 8 pose of inspection, to determine whether the provisions of this chapter have
 9 been complied with. Such inspections shall be conducted in the presence of
 10 the operator or his duly authorized employees or representatives, and the
 11 operator shall make such persons available for the purpose of inspections.

12 (5) To reclaim affected land with respect to which ~~a bond~~ financial as-
 13 urance has been forfeited, and, in the board's discretion, with the permis-
 14 sion of the landowner, to reclaim such other land ~~which that~~ becomes affected
 15 land.

16 (6) To complete closure activities with respect to a cyanidation fa-
 17 cility for which a permanent closure ~~bond~~ financial assurance has been for-
 18 feited.

19 (7) (a) Upon receipt of a ~~proposed~~ reclamation plan or permanent clo-
 20 sure plan or amended or supplemental plan required by this chapter, the
 21 director shall notify the cities and counties in which the surface min-
 22 ing operation or cyanidation facility is proposed. The notice shall in-
 23 clude the name and address of the operator and shall describe the proce-
 24 dure and the schedule by which the plan may be approved or denied. This
 25 notification requirement shall not apply to exploration operations.

26 (b) Cities and counties may review the nonconfidential portions of the
 27 plan at the department's office and may provide comments to the direc-
 28 tor concerning the plan. Nothing in this section shall extend the time
 29 limit for the board to deliver to the operator a notice of rejection or
 30 approval of the plan or affect the confidentiality provisions of sec-
 31 tion 47-1515, Idaho Code.

32 (c) No city or county shall enact or adopt any ordinance, rule or reso-
 33 lution to regulate exploration or surface mining operations or a perma-
 34 nent closure plan in this state ~~which that~~ conflicts with any provision
 35 of this chapter or the rules promulgated thereunder. This subpart shall
 36 not affect the planning and zoning authorities available to cities and
 37 counties pursuant to chapter 65, title 67, Idaho Code.

38 SECTION 6. That Section 47-1506, Idaho Code, be, and the same is hereby
 39 amended to read as follows:

40 47-1506. OPERATOR -- DUTIES PRIOR TO OPERATION -- SUBMISSION OF MAPS
 41 AND PLANS. (a) Any operator desiring to conduct surface mining operations
 42 within the state of Idaho for the purpose of immediate or ultimate sale of the
 43 minerals in either the natural or processed state shall submit to the board
 44 prior to commencing such surface mining operations a reclamation plan that
 45 contains the following:

46 (1) A map of the mine panel on which said operator desires to conduct
 47 surface mining operations, which sets forth with respect to said panel
 48 the following:

1 (i) The location of existing roads and anticipated access and
 2 main haulage roads planned to be constructed in conducting the
 3 ~~surface~~ mining operations.

4 (ii) The approximate boundaries of the lands to be utilized in the
 5 process of ~~surface~~ mining operations.

6 (iii) The approximate location and, if known, the names of all
 7 streams, creeks, or bodies of water within the area where ~~surface~~
 8 mining operations shall take place.

9 (iv) The name and address of the person to whom notices, orders,
 10 and other information required to be given to the operator pur-
 11 suant to this chapter may be sent.

12 (v) The drainage adjacent to the area where the surface is being
 13 utilized by ~~surface~~ mining operations.

14 (vi) The approximate boundaries of the lands that will become af-
 15 fected lands as a result of ~~surface~~ mining operations during the
 16 year immediately following the date that a reclamation plan is ap-
 17 proved as to said panel, together with the number of acres included
 18 within said boundaries.

19 (vii) A description of foreseeable, ~~site-specific nonpoint~~
 20 ~~sources of water quality impacts upon adjacent surface waters, and~~
 21 ~~the best management practices that will be used to control such~~
 22 ~~nonpoint source impacts from mining operations and proposed water~~
 23 management activities to comply with water quality requirements.

24 (viii) A description of foreseeable, ~~site-specific impacts from~~
 25 ~~acid rock drainage and the best management practices that will be~~
 26 ~~used to mitigate the impacts, if any, from such acid rock drainage~~
 27 post-closure activities.

28 (2) Diagrams showing the planned location of pits, mineral stockpiles,
 29 overburden piles and tailings ponds on said panel.

30 (3) A description of the action which said operator intends to take to
 31 comply with the provisions of this chapter as to the ~~surface~~ mining op-
 32 erations conducted on such mine panel.

33 (b) (1) Any operator who is not required to submit an operating plan for
 34 a ~~surface~~ mining operation to an entity of the federal government shall
 35 submit to the board, as part of the reclamation plan, an operating plan
 36 with regards to that ~~surface~~ mining operation. The operating plan shall
 37 include:

38 (i) Maps showing the location of existing roads and antici-
 39 pated access and main haulage roads planned to be constructed for
 40 ~~surface~~ mining operations.

41 (ii) The boundaries and acreage of the lands to be utilized in the
 42 process of ~~surface~~ mining operations.

43 (iii) Maps showing the planned location of pits, mineral stock-
 44 piles, overburden piles and tailings ponds for the ~~surface~~ mining
 45 operations.

46 (iv) The location and, if known, the names of all streams, creeks,
 47 or bodies of water within the area where ~~surface~~ mining operations
 48 shall take place.

49 (v) The drainage adjacent to the area where the surface is being
 50 utilized by ~~surface~~ mining operations.

1 (vi) The approximate boundaries and acreage of the lands that will
2 become affected during the first year of construction of ~~surface~~
3 mining operations.

4 (2) The board shall promulgate rules or guidelines to allow the content
5 of a nonfederal operating plan to be determined based upon the type and
6 size of the ~~surface~~ mining operation.

7 (c) No operator who is required to submit an operating plan for a
8 ~~surface~~ mining operation to an entity of the federal government shall be re-
9 quired to submit an operating plan to the board. This provision shall apply
10 to all lands, regardless of surface or mineral ownership, covered by the
11 operating plan submitted to the entity of the federal government.

12 (d) No operator shall commence ~~surface~~ mining operations on any mine
13 panel without first having a reclamation plan approved by the state board of
14 land commissioners.

15 (e) Any operator desiring to conduct exploration operations within
16 the state of Idaho using motorized earth-moving equipment in order to lo-
17 cate minerals for immediate or ultimate sale in either the natural or the
18 processed state shall notify the board in writing prior to or as soon after
19 beginning exploration operations as possible and in any event within seven
20 (7) days after beginning exploration operations. The notice shall include
21 the following:

22 (1) The name and address of the operator;

23 (2) The location of the operation and the starting date and estimated
24 completion date;

25 (3) The anticipated size of the operation, and the general method of op-
26 eration.

27 The notice shall be subject to disclosure according to chapter 1, title 74,
28 Idaho Code.

29 (f) Any operator desiring to operate a cyanidation facility within the
30 state of Idaho shall submit to the board prior to the operation of such a fa-
31 cility a permanent closure plan that contains the following:

32 (1) The name and address of the operator;

33 (2) The location of the operation;

34 (3) The objectives, methods and procedures the operator will use to at-
35 tain permanent closure;

36 (4) An estimate of the cost of attaining permanent closure as well as an
37 estimate of the costs to achieve critical phases of the closure plan;

38 (5) Any other information specified in the rules adopted to carry out
39 the intent and purposes of this chapter; and

40 (6) An operator may incorporate a description of post-closure activi-
41 ties in a permanent closure plan in lieu of inclusion in a reclamation
42 plan.

43 (g) The board may require a reasonable fee for reviewing and approving
44 a permanent closure plan or reclamation plan. The fee may include the rea-
45 sonable cost to employ a qualified independent party, acceptable to the op-
46 erator and the board, to verify the accuracy of the cost estimate required in
47 subsection (f) (4) of this section and section 47-1512 (c), Idaho Code.

48 (h) The board shall coordinate its review of activities in ~~the~~ a recla-
49 mation plan, operating plan, and permanent closure plan under statutory
50 responsibility of the department of environmental quality with that depart-

1 ment, but that coordination shall not extend the time limit in which the
2 board must act on a plan submitted.

3 (i) No operator shall commence operation of a cyanidation facility
4 without first having a permanent closure plan approved by the board.

5 SECTION 7. That Section 47-1507, Idaho Code, be, and the same is hereby
6 amended to read as follows:

7 47-1507. PLAN -- APPROVAL OR REJECTION BY BOARD -- HEARING. (a) Upon
8 determination by the board that a reclamation or permanent closure plan or
9 any amended plan submitted by an operator meets the requirements of this
10 chapter, the board shall deliver to the operator, in writing, a notice of ap-
11 proval of such plan, and thereafter said plan shall govern and determine the
12 nature and extent of the obligations of the operator for compliance with this
13 chapter, with respect to the mine panel or cyanidation facility for which the
14 plan was submitted.

15 (b) If the board determines that a reclamation or permanent closure
16 plan or amended plan fails to fulfill the requirements of this chapter, it
17 shall deliver to the operator, in writing, a notice of rejection of the plan
18 and shall set forth in said notice of rejection the reasons for such rejec-
19 tion, the factual findings upon which such rejection is based, the manner
20 in which the plan fails to fulfill said requirements, and the requirements
21 necessary to comply with this chapter. Upon receipt of said notice of rejec-
22 tion, said operator may submit amended plans. Upon further determination by
23 the board that the amended plan still does not fulfill the requirements of
24 said section, it shall deliver to the operator, in writing, a notice of re-
25 jection of the amended plan in the same form as set out ~~above~~ in this section.

26 (c) Weather permitting, the board shall deliver to the operator within
27 sixty (60) days after the receipt of any reclamation plan or amended recla-
28 mation plan, or within one hundred eighty (180) days after the receipt of any
29 permanent closure plan or amended permanent closure plan, the notice of re-
30 jection or notice of approval of said plan, as the case may be, provided, how-
31 ever, that if the board fails to deliver a notice of approval or notice of re-
32 jection within said time period, the plan submitted shall be deemed to comply
33 with this chapter, and the operator may commence and conduct his ~~surface~~
34 mining operations on the mine panel or operate the cyanidation facility covered
35 by such plan as if a notice of approval of said plan had been received from
36 the board; provided, however, that if weather conditions prevent the board
37 from inspecting the mine panel or cyanidation facility to obtain information
38 needed to approve or reject a submitted plan, it may, in writing to the oper-
39 ator, extend the time not to exceed thirty (30) days after weather conditions
40 permit such inspection.

41 (d) For the purpose of determining whether a proposed plan or amended or
42 supplemental plan complies with the requirements of this chapter, the board
43 may, in its discretion, call for a public hearing. The hearing shall be held
44 under such rules as promulgated by the board. Any interested person may ap-
45 pear at the hearing and give testimony. At the discretion of the board, the
46 director may conduct the hearing and transmit a summary thereof to the board.
47 Any hearing held shall not extend the period of time limit in which the board
48 must act on a plan submitted.

1 SECTION 8. That Section 47-1508, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 47-1508. AMENDED PLAN -- SUPPLEMENTAL PLAN -- SUBMISSION. (a) In the
4 event that a material change in circumstances arises ~~which~~ that the opera-
5 tor, or the board, believes requires a change in an approved plan, including
6 any amended plan, then the operator shall submit to the board a supplemen-
7 tal plan setting forth the proposed changes and the board shall likewise set
8 forth its proposed changes and ~~stating~~ state the reasons therefor. Upon de-
9 termination by the board that a supplemental plan or any amended supplemen-
10 tal plan submitted by the operator meets the requirements of this chapter,
11 it shall deliver to the operator, in writing, a notice of approval of said
12 supplemental plan, and thereafter said supplemental plan shall govern and
13 determine the nature and extent of the obligations of the operator for com-
14 pliance with respect to the mine panel or cyanidation facility for which the
15 plan was submitted.

16 (b) If the board determines that a supplemental plan fails to fulfill
17 the requirements of this chapter, it shall deliver to the operator, in writ-
18 ing, a notice of rejection of the supplemental plan and shall set forth in
19 said notice of rejection the manner in which said plan fails to fulfill said
20 requirements and shall stipulate the corrective requirements necessary to
21 comply with said sections. Upon receipt of said notice of rejection, the op-
22 erator may submit amended supplemental plans. Upon further determination
23 by the board that an amended supplemental plan does not fulfill the require-
24 ments of said sections, it shall deliver to the operator, in writing, a no-
25 tice of rejection of amended supplemental plan, and shall set forth in said
26 notice of rejection the manner in which such amended supplemental plan fails
27 to fulfill said requirements, and shall stipulate the requirements neces-
28 sary to comply with said sections.

29 (c) The board shall, weather permitting, deliver to the operator within
30 sixty (60) days after the receipt of any supplemental reclamation plan or
31 amended supplemental reclamation plan, or within one hundred eighty (180)
32 days after the receipt of any supplemental permanent closure plan or amended
33 supplemental permanent closure plan, the notice of rejection, setting forth
34 in detail the reasons for such rejection and the factual findings upon which
35 such rejection is based, or notice of approval of said plan, as the case may
36 be, provided, however, that if the board fails to deliver a notice of ap-
37 proval or notice of rejection within said time period, the plan submitted
38 shall be deemed to comply with this chapter and the operator may commence
39 and conduct or continue, as the case may be, his ~~surface~~ mining operations
40 or operate the cyanidation facility as if a notice of approval of said plan
41 had been received from the board. If weather conditions prevent the board
42 from inspecting the mine panel or cyanidation facility to obtain information
43 needed to approve or reject a submitted plan, it may, in writing to the oper-
44 ator, extend the time not to exceed thirty (30) days after weather conditions
45 permit such inspection.

46 (d) If an operator determines that unforeseen events or unexpected
47 conditions require immediate changes in or additions to an approved recla-
48 mation or permanent closure plan, the operator may continue operations in
49 accordance with the procedures dictated by the changed conditions, pending

1 submission and approval of a supplemental plan, even though such operations
2 do not comply with the approved plan, provided, however, that nothing herein
3 stated shall be construed to excuse the operator from complying with the
4 reclamation requirements of sections 47-1509 and 47-1510, Idaho Code, ~~of~~
5 ~~this chapter~~ or from the applicable closure requirements of a permit is-
6 sued under section 39-118A, Idaho Code. Notice of such unforeseen events
7 or unexpected conditions shall be given to the board within ten (10) days
8 after discovery thereof, and a proposed supplemental plan shall be submitted
9 within thirty (30) days after discovery thereof.

10 (e) At least once every five (5) years, the board shall review recla-
11 mation plans and revise if necessary to meet the requirements of sections
12 47-1506, 47-1509, 47-1510, and 47-1511, Idaho Code, when there is a mate-
13 rial change in the reclamation plan. As part of this review, the board shall
14 revise the amount, terms, and conditions of any financial assurance when
15 there is a material change in the reclamation plan or a material change in the
16 estimated reasonable costs of reclamation determined pursuant to section
17 47-1512, Idaho Code. Any such revision shall apply only to the affected
18 lands covered by the material change.

19 (f) For a permanent closure plan approved by the board after July 1,
20 2005, the board shall periodically review, and revise if necessary to meet
21 the requirements of this chapter, the amount, terms, and conditions of any
22 financial assurance when there is a material change in the permanent closure
23 plan or a material change in the estimated reasonable costs of permanent clo-
24 sure determined pursuant to section 47-1512, Idaho Code. The board may re-
25 quire a fee sufficient to employ a qualified independent party, acceptable
26 to the operator and the board, to verify any revised estimate of the reason-
27 able costs of permanent closure.

28 (g) Amendments and revisions are subject to the fee requirements in
29 section 47-1506(g), Idaho Code.

30 (h) Any determination by the board under this section shall be consid-
31 ered a final order pursuant to section 47-1514, Idaho Code.

32 SECTION 9. That Section 47-1509, Idaho Code, be, and the same is hereby
33 amended to read as follows:

34 47-1509. PROCEDURES IN RECLAMATION. (a) Except as otherwise provided
35 in this act, every operator who conducts exploration or ~~surface~~ mining op-
36 erations ~~which~~ that disturb two (2) or more acres within the state of Idaho
37 shall perform the following reclamation activities:

38 (1) Ridges of overburden shall be leveled in such manner as to have a
39 minimum width of ten (10) feet at the top.

40 (2) Peaks of overburden shall be leveled in such a manner as to have a
41 minimum width of fifteen (15) feet at the top.

42 (3) Overburden piles shall be reasonably prepared to control erosion.

43 ~~(4) Where water run-off from affected lands results in stream or lake~~
44 ~~siltation in excess of that which normally results from run-off, the~~
45 ~~operator shall prepare affected lands and adjacent premises under the~~
46 ~~control of the operator~~ Manage water as necessary to meet the require-
47 ments authorized under chapter 1, title 39, Idaho Code.

48 (5) Roads ~~which~~ that are abandoned shall be cross-ditched insofar as
49 necessary to avoid erosion gullies.

1 (6) Exploration drill holes shall be plugged or otherwise left so as to
2 eliminate hazards to humans or animals.

3 (7) Abandoned affected lands shall be topped to the extent that such
4 overburden is reasonably available from the pit, with that type of over-
5 burden ~~which is~~ conducive to the control of erosion or the growth of the
6 vegetation ~~which that~~ the operator elects to plant thereon.

7 (8) The operator shall conduct revegetation activities on the mined ar-
8 eas, overburden piles, and abandoned roads in accordance with the pro-
9 visions of this act.

10 (9) Tailings ponds shall be reasonably prepared in such a condition
11 that they will not constitute a hazard to human or animal life.

12 (10) Complete all other reclamation required in the approved reclama-
13 tion plan.

14 (b) The board may request, in writing, that a given road or portion
15 thereof not be cross-ditched or revegetated, and, upon such request, the
16 operator shall be excused from performing such activities as to such road or
17 portion thereof.

18 (c) Every operator who conducts exploration or ~~surface~~ mining opera-
19 tions ~~which that~~ disturb less than two (2) acres within the state of Idaho
20 shall, wherever possible, contour the lands so disturbed to approximate the
21 previous contour of the lands.

22 (d) The operator and board may agree, in writing, to do any act with re-
23 spect to reclamation above and beyond the requirements herein set forth.

24 SECTION 10. That Section 47-1510, Idaho Code, be, and the same is hereby
25 amended to read as follows:

26 47-1510. VEGETATION PLANTING. (a) Except as otherwise provided in
27 this act, an operator shall plant, on affected lands, vegetation species
28 ~~which that~~ can be expected to result in vegetation comparable to the vegeta-
29 tion ~~which that~~ was growing on the area occupied by the affected lands prior
30 to the exploration and ~~surface~~ mining operations.

31 (b) No planting shall be required on any affected lands, or portions
32 thereof, where planting would not be practicable or reasonable because the
33 soil is composed of sand, gravel, shale, stone or other material to such an
34 extent as to prohibit plant growth.

35 (c) No planting shall be required to be made with respect to any of the
36 following:

37 (1) On any mined area or overburden pile proposed to be used in the min-
38 ing operations for haulage roads, ~~so~~ as long as such roads are not aban-
39 doned.

40 (2) On any mined area or overburden pile where lakes are formed by rain-
41 fall or drainage ~~run-off~~ runoff from the adjoining lands.

42 (3) On any mineral stockpile.

43 (4) On any exploration trench ~~which that~~ will become a part of any pit or
44 overburden disposal area.

45 (5) On any road ~~which that~~ the operator intends to use in his mining op-
46 erations, ~~so~~ as long as said road has not been abandoned.

47 SECTION 11. That Section 47-1511, Idaho Code, be, and the same is hereby
48 amended to read as follows:

1 47-1511. RECLAMATION ACTIVITIES -- TIME LIMITATIONS. (a) All reclama-
2 tion activities required to be conducted under this act shall be performed
3 in a good and workmanlike manner, with all reasonable diligence, and as to a
4 given exploration drill hole, road or trench, within one (1) year after aban-
5 donment thereof.

6 (b) The reclamation activity as to a given mine panel shall be commenced
7 within one (1) year after ~~surface~~ mining operations have permanently ceased
8 as to such mine panel, provided, however, that in the event that during the
9 course of ~~surface~~ mining operations on a given mine panel, the operator
10 permanently ceases disposing of overburden on a given overburden pile, or
11 permanently ceases removing minerals from a given pit, or permanently ceases
12 using a given road or other affected land, then the reclamation activities
13 to be conducted hereunder as to such pit, road, overburden pile, or other af-
14 fected land, shall be commenced within one (1) year after such termination,
15 despite the fact that all operations as to the mine panel, which includes
16 such pit, road, overburden pile, or other affected land, have not perma-
17 nently ceased. It shall be presumed that the operator has permanently ceased
18 ~~surface~~ mining operations as to a given affected land if no substantial
19 amount of overburden has been placed on the overburden pile in question or if
20 no minerals have been removed from the pit in question, as the case may be,
21 for a period of three (3) years.

22 This presumption may be rebutted by evidencing, in writing, to the board
23 what ~~surface~~ mining operations the operator has planned on the pit, road,
24 overburden pile, or other affected land not used within a three (3) year pe-
25 riod. Should the board determine that the operator, in good faith, intends
26 to continue the ~~surface~~ mining operation within a reasonable period of time,
27 it shall, in writing, so notify the operator. Should the board determine
28 that the operation will not be continued within a reasonable period of time,
29 the board shall proceed as though the ~~surface~~ mining operation has been aban-
30 doned.

31 SECTION 12. That Section 47-1512, Idaho Code, be, and the same is hereby
32 amended to read as follows:

33 47-1512. ~~PERFORMANCE BOND FINANCIAL ASSURANCE~~ -- REQUISITES. (a)
34 Prior to conducting any ~~surface~~ mining operations on a mine panel covered by
35 an approved reclamation plan or operating a cyanidation facility covered by
36 an approved permanent closure plan, an operator shall submit to the board a
37 ~~bond~~ financial assurance meeting the requirements of this section.

38 (1) ~~The penalty of the initial reclamation bond~~ financial assurance
39 filed prior to conducting any ~~surface~~ mining operations on a mine panel
40 shall be in an amount determined by the board to be the estimated rea-
41 sonable costs of reclamation required in this chapter, in the event
42 of failure to reclaim by an operator, of affected lands proposed to be
43 mined during the next calendar year ~~plus ten percent (10%) of such costs~~
44 ~~as to the acreage of affected land~~ designated by the operator pursuant
45 to section 47-1506(a) (1) (vi), Idaho Code, and subsection (b) of this
46 section.

47 (2) ~~The penalty of the initial permanent closure bond~~ financial as-
48 surance filed prior to operating a cyanidation facility shall be in an
49 amount determined by the board to be the estimated reasonable costs to

1 complete the activities specified in the permanent closure plan re-
2 quired in this chapter, in the event of the failure of an operator to
3 complete those activities, ~~plus ten percent (10%) of such costs.~~ In
4 setting ~~the bond~~ such amount, the board shall avoid duplication with
5 ~~bonds and sureties~~ financial assurance deposited with other governmen-
6 tal agencies.

7 (3) The determination of the ~~bond~~ financial assurance amount shall con-
8 stitute a final ~~decision order~~ subject to judicial review as set forth
9 in subsection (a) of section 47-1514, Idaho Code. In lieu of any ~~bond~~
10 financial assurance required hereunder, the operator may deposit cash
11 and governmental securities with the board, in an amount equal to that
12 of the required ~~bond~~ financial assurance, on the conditions as pre-
13 scribed in this section.

14 (b) Prior to the time that lands designated to become affected lands
15 on a mine panel, in addition to those designated pursuant to section
16 47-1506(a)(1)(vi), Idaho Code, become affected land, the operator shall
17 submit to the board a ~~bond~~ financial assurance meeting the requirements of
18 section 47-1512(c), Idaho Code, ~~and the penalty of such bond which~~ shall be
19 in the amount necessary to ~~insure~~ ensure the performance of the duties of the
20 operator under this chapter as to such affected lands actually proposed to be
21 mined within the next calendar year. If additional acreage is subsequently
22 proposed to be mined by an operator, ~~the penalty of such bond~~ financial as-
23 urance shall be in an amount determined by the board to be the estimated
24 reasonable costs of reclamation required by this chapter, in the event of
25 failure to reclaim by an operator, of affected lands proposed to be mined
26 during the next calendar year ~~plus ten percent (10%) of such costs.~~

27 (c) ~~Except as provided in this subsection, no bond~~ For mining opera-
28 tions with affected land greater than five (5) acres, the financial assur-
29 ance amount shall be based on the estimated reasonable costs of completing
30 reclamation required in this chapter using standard estimating techniques,
31 including indirect costs, developed by the board. For all other mining opera-
32 tions, the financial assurance for reclamation submitted pursuant to this
33 chapter shall not exceed fifteen thousand dollars (\$15,000) for any given
34 acre of such affected land. The board may require a ~~bond~~ financial assur-
35 ance in excess of fifteen thousand dollars (\$15,000) for any given acre of
36 affected land only when the following conditions have been met:

37 (1) The board has determined that such ~~bond~~ financial assurance is nec-
38 essary to meet the requirements of sections 47-1506, 47-1509, 47-1510
39 and 47-1511, Idaho Code.

40 (2) The board has delivered to the operator, in writing, a notice set-
41 ting forth the reasons it believes such ~~bond~~ financial assurance is nec-
42 essary.

43 (3) The board has conducted a hearing where the operator is allowed to
44 give testimony to the board concerning the amount of the proposed ~~bond~~
45 financial assurance. The hearing shall be held under such rules as pro-
46 mulgated by the board. This requirement for a hearing may be waived, in
47 writing, by the operator. Any hearing held shall, at the discretion of
48 the director, extend the time, up to thirty (30) days, in which the board
49 must act on a plan submitted.

1 (d) ~~Except as provided in this subsection, no bond~~ For a cyanidation
2 facility with affected land greater than five (5) acres, the financial as-
3 surance amount shall be based on the estimated reasonable costs to complete
4 reclamation required under this chapter using standard estimating tech-
5 niques, including indirect costs, developed by the board. For all other
6 cyanidation facilities, the financial assurance submitted for permanent
7 closure of a cyanidation facility pursuant to this chapter shall not exceed
8 five million dollars (\$5,000,000). The board may require a ~~bond~~ financial
9 assurance in excess of five million dollars (\$5,000,000) for a cyanidation
10 facility only when the following conditions have been met:

11 (1) The board has determined that such ~~bond~~ financial assurance is nec-
12 essary to meet the requirements of this chapter.

13 (2) The board has delivered to the operator, in writing, a notice set-
14 ting forth the reasons it believes such ~~bond~~ financial assurance is nec-
15 essary.

16 (3) The board has conducted a hearing where the operator is allowed to
17 give testimony to the board concerning the amount of the proposed ~~bond~~
18 financial assurance. The hearing shall be held under such rules as pro-
19 mulgated by the board. This requirement for a hearing may be waived, in
20 writing, by the operator. Any hearing held shall, at the discretion of
21 the director, extend the time, up to sixty (60) days, in which the board
22 must act on the permanent closure plan submitted.

23 (e) Any ~~bond~~ financial assurance required under this chapter to be
24 filed and maintained with the board shall be in such form as the board pre-
25 scribes, payable to the state of Idaho, conditioned that the operator shall
26 faithfully perform all requirements of this chapter and comply with all
27 rules of the board in effect as of the date of approval of the plan in accor-
28 dance with the provisions of this chapter. ~~An operator may at any time file~~
29 ~~a single bond in lieu of separate bonds filed or to be filed pursuant to this~~
30 ~~chapter, provided that the penalty of such single bond shall be equal to the~~
31 ~~total of the penalties of the separate bonds being combined into a single~~
32 ~~bond.~~ Further, any ~~bond~~ financial assurance provided to another governmen-
33 tal agency that also meets the requirements in this section shall be deemed
34 to be sufficient ~~surety~~ for the purposes of this chapter.

35 (f) ~~A bond~~ Financial assurance filed as ~~above~~ prescribed in this sec-
36 tion shall not be ~~cancelled by the surety canceled~~, except after not less
37 than ninety (90) days' notice to the board. Upon failure of the operator to
38 make substitution of ~~surety~~ financial assurance prior to the effective date
39 of cancellation of the ~~bond~~ financial assurance or within thirty (30) days
40 following notice of cancellation by the board, whichever is later, the board
41 shall have the right to issue a cease and desist order and seek injunctive
42 relief to stop the operator from conducting operations covered by such ~~bond~~
43 financial assurance until such substitution has been made.

44 (g) If the license to do business in this state of any surety, upon a
45 bond filed with the board pursuant to this chapter, shall be suspended or re-
46 voked, the operator, within thirty (30) days after receiving notice thereof
47 from the board, shall substitute for such surety ~~a good and sufficient corpo-~~
48 ~~rate surety licensed to do business in this state or other surety acceptable~~
49 ~~to the board~~ alternative financial assurance in accordance with this sec-
50 tion. Upon failure of the operator to make substitution of ~~surety~~ financial

1 assurance, the board shall have the right to issue a cease and desist order
2 and seek injunctive relief to stop the operator from conducting operations
3 covered by such ~~bond~~ financial assurance until such substitution has been
4 made.

5 (h) When an operator shall have completed all or a portion of recla-
6 mation requirements, or all or a portion of any post-closure activity, un-
7 der the provisions of this chapter as to any portion of affected land or any
8 post-closure activity, he ~~shall~~ may notify the board. Within thirty (30)
9 days after the receipt of such notice, the board shall notify the operator as
10 to whether or not the reclamation or post-closure activity performed meets
11 the requirements of the reclamation plan pertaining to the land in question.

12 (1) Upon the determination by the board that the requirements of the
13 reclamation plan in question have been substantially met as to said
14 lands or such activity, the amount of ~~bond~~ financial assurance in effect
15 as to such lands or such activity shall be reduced by an amount desig-
16 nated by the board to reflect the reclamation done.

17 (2) Upon a determination by the board that the requirements of the
18 reclamation plan in question have not been substantially met as to said
19 lands or such activity, it shall deliver to the operator, in writing, a
20 notice of rejection of the request for ~~bond~~ financial assurance release
21 and shall set forth in said notice the reasons for such rejection, the
22 factual findings upon which such rejection is based, the manner in which
23 the reclamation fails to fulfill the requirements of the reclamation
24 plan, and the changes necessary to comply with the requirements of the
25 reclamation plan.

26 (i) When an operator shall have completed an activity specified in an
27 approved permanent closure plan, he may notify the board. Within thirty (30)
28 days after the receipt of such notice, the board shall notify the operator as
29 to whether or not the activity performed meets the requirements of the per-
30 manent closure plan. In determining whether or not an activity under the
31 statutory responsibility of the department of environmental quality meets
32 the requirements of the permanent closure plan, the board shall consult with
33 that department.

34 (1) Upon the determination by the board that the activity meets the re-
35 quirements of the permanent closure plan, the ~~bond~~ financial assurance
36 for permanent closure shall be reduced by an amount designated by the
37 board to reflect the activity completed.

38 (2) Upon a determination by the board that the requirements of the
39 permanent closure plan in question have not been met as to said lands,
40 it shall deliver to the operator, in writing, a notice of rejection of
41 the request for ~~bond~~ financial assurance release and shall set forth in
42 said notice the reasons for such rejection, the factual findings upon
43 which such rejection is based, the manner in which the activity fails to
44 fulfill the requirements of the permanent closure plan, and the changes
45 necessary to comply with the requirements of the permanent closure
46 plan.

47 (j) An operator may withdraw any land previously designated as affected
48 land within a mine panel, provided that it is not already affected land, and
49 in such event, he shall notify the board, and the amount of the bond in effect
50 as to the lands in that mine panel shall be reduced by an amount designated

1 by the board as the amount which would have been necessary to reclaim such
2 lands.

3 (k) Proof of financial assurance may be demonstrated by surety bond,
4 corporate guarantee, letter of credit, certificate of deposit, trust fund,
5 and any combination thereof or any other proof of financial assurance ap-
6 proved by the board.

7 (1) An operator may provide proof of financial assurance by use of a
8 trust fund, provided the following conditions are met:

9 (1) The trust fund is managed by a third-party trustee;

10 (2) The trust fund names the state of Idaho as beneficiary; and

11 (3) The trust is initially funded in an amount at least equal to:

12 (i) The financial assurance amount as estimated by this section;

13 (ii) A specified schedule of payments into the fund; or

14 (iii) A pro-rata amount if used with another financial assurance
15 mechanism.

16 (4) The trustee shall invest the principal and income of the fund in
17 accordance with general investment practices. Investments can include
18 equities, bonds, and government securities.

19 (5) The operator enters into a memorandum of agreement with the board
20 that identifies the trustee, a range of investments, initial funding,
21 schedule of payments, and expected rate of return.

22 (6) The trust fund balance shall be reviewed by the board at a period
23 not to exceed once every five (5) years and adjustments to the trust fund
24 made to meet the conditions of the agreement and this chapter.

25 (m) Following the permanent cessation of a mining operation, the board
26 may determine that a post-closure period of greater than thirty (30) years is
27 necessary only when the following conditions have been met:

28 (1) The board has determined that such longer post-closure period
29 is necessary to meet the requirements of sections 47-1506, 47-1509,
30 47-1510, and 47-1511, Idaho Code;

31 (2) The board has delivered to the operator, in writing, a notice set-
32 ting forth the reasons it believes a longer post-closure period is nec-
33 essary;

34 (3) The board has conducted a hearing where the operator is allowed to
35 give testimony concerning the length of the post-closure period. The
36 hearing shall be held under such rules as promulgated by the board. The
37 requirement for a hearing may be waived by the operator; and

38 (4) Any decision by the board under this subsection shall be considered
39 a final order pursuant to section 47-1514, Idaho Code.

40 (n) Any mining operation that is addressing water management, and any
41 releases to the environment through a comprehensive environmental response,
42 compensation and liability act (CERCLA) order, including any required fi-
43 ancial assurance, shall not be required to submit financial assurance to
44 the board for any activities covered by a CERCLA order.

45 SECTION 13. That Section 47-1513, Idaho Code, be, and the same is hereby
46 amended to read as follows:

47 47-1513. OPERATOR'S FAILURE TO COMPLY -- FORFEITURE OF ~~BOND~~ FINANCIAL
48 ASSURANCE -- PENALTIES -- RECLAMATION FUND -- CYANIDATION CLOSURE FUND. (a)
49 Whenever the board determines that an operator has not complied with the pro-

1 visions of this chapter, the board may notify the operator of such noncom-
2 pliance, and may, by private conference, conciliation, and persuasion, en-
3 deavor to remedy such violation. In the event of a violation referred to
4 in subsections (d) and (e) of this section, the board may proceed without
5 an administrative action, hearing or decision to exercise the remedies set
6 forth in said subsections. Additionally, no administrative action, hear-
7 ing or decision shall be required from the Idaho board of environmental qual-
8 ity prior to the board proceeding under subsections (d) and (e) of this sec-
9 tion. In the event of the failure of any conference, conciliation and per-
10 suasion to remedy any alleged violation, the board may cause to have issued
11 and served upon the operator alleged to be committing such violation, a for-
12 mal complaint ~~which~~ that shall specify the provisions of this chapter ~~which~~
13 that the operator allegedly is violating, and a statement of the manner in
14 and the extent to which said operator is alleged to be violating the provi-
15 sions of this chapter. Such complaint may be served by certified mail, and
16 a return receipt signed by the operator, an officer of a corporate operator,
17 or the designated agent of the operator shall constitute service. The op-
18 erator shall answer the complaint and request a hearing before a designated
19 hearing officer within thirty (30) days from receipt of the complaint if mat-
20 ters asserted in the complaint are disputed. If the operator fails to answer
21 the complaint and request a hearing, the matters asserted in the complaint
22 shall be deemed admitted by the operator, and the board may proceed to can-
23 cel the reclamation or permanent closure plan and forfeit the ~~bond~~ financial
24 assurance in the amount necessary to reclaim affected lands or complete the
25 permanent closure activities. Upon request for a hearing by an operator,
26 the board shall schedule a hearing before a hearing officer appointed by the
27 board at a time not less than thirty (30) days after the date the operator
28 requests a hearing. The board shall issue subpoenas at the request of the
29 director of the department of lands and at the request of the charged op-
30 erator, and the matter shall be otherwise handled and conducted in accor-
31 dance with chapter 52, title 67, Idaho Code. The hearing officer shall, pur-
32 suant to said hearing, enter an order in accordance with chapter 52, title
33 67, Idaho Code, which, if adverse to the operator, shall designate a time pe-
34 riod within which corrective action should be taken. The time period desig-
35 nated shall be long enough to allow the operator, in the exercise of reason-
36 able diligence, to rectify any failure to comply designated in said order.
37 In the event that the operator takes such action as is necessary to comply
38 with the order within the time period designated in said order, no further
39 action shall be taken by the board to compel performance under the chapter.

40 (b) Upon request of the board, the attorney general shall institute
41 proceedings to have the ~~bond~~ financial assurance of an operator forfeited
42 for the violation by the operator of an order entered pursuant to this sec-
43 tion.

44 (c) The forfeiture of such ~~bond~~ financial assurance shall fully satisfy
45 all obligations of the operator to reclaim the affected land or complete per-
46 manent closure activities under the provisions of this chapter. If the vi-
47 olation involves an operator that has not furnished a ~~bond~~ financial assur-
48 ance required by this chapter, or an operator that is not required to furnish
49 a ~~bond~~ financial assurance pursuant to this chapter, or an operator who vio-
50 lates this chapter by performing an act not included in the original approved

1 reclamation plan or the original approved permanent closure plan, and such
2 departure from the plan is not subsequently approved, such operator shall
3 be subject to a civil penalty for his failure to comply with such order in
4 the amount determined by the board to be the anticipated cost of reasonable
5 reclamation of affected lands or permanent closure of the cyanidation facil-
6 ity. Nothing in this subsection shall relieve the operator of any obliga-
7 tion, including the obligation to complete closure requirements, pursuant
8 to a permit issued by the department of environmental quality under section
9 39-118A, Idaho Code, or limit that department's authority to require compli-
10 ance with such permit requirements.

11 (d) Notwithstanding any other provisions of this chapter, the board may
12 commence an action without ~~bond~~ financial assurance or undertaking, in the
13 name of the state of Idaho, to enjoin any operator who is conducting opera-
14 tions without an approved plan required by section 47-1506, Idaho Code, or
15 without the ~~bond~~ financial assurance required by this chapter. The court, or
16 a judge thereof at chambers, if satisfied from the complaint or by affidavits
17 that such acts have been or are being committed, shall issue a temporary re-
18 straining order without notice or bond, enjoining the defendant, his agents,
19 and employees from conducting such operations without said plan or bond.
20 Upon a showing of good cause therefor, the temporary restraining order may
21 require the defendant to perform reclamation of the mined area in conformity
22 with sections 47-1509 and 47-1510, Idaho Code, or to complete permanent
23 closure activities, pending final disposition of the action. The action
24 shall then proceed as in other cases for injunctions. If it is established
25 at trial that the defendant has operated without an approved plan or ~~bond~~
26 financial assurance, the court shall enter, in addition to any other order,
27 a decree enjoining the defendant, his agents and employees from thereafter
28 conducting such activities or similar actions in violation of this chapter.
29 The board may, in conjunction with its injunctive procedures, proceed in
30 the same or in a separate action to recover from an operator who is conduct-
31 ing ~~surface~~ mining or exploration operations or operating a cyanidation
32 facility without the required plan or ~~bond~~ financial assurance, the cost
33 of performing the reclamation activities required by sections 47-1509 and
34 47-1510, Idaho Code, or the cost of permanent closure activities from any
35 such operator who has not ~~filed a bond~~ provided financial assurance to cover
36 the cost of the required activities.

37 (e) Notwithstanding any other provision of this chapter, the board may,
38 without bond or undertaking and without any administrative action, hearing
39 or decision, commence an action in the name of the state of Idaho (1) to en-
40 join a permitted ~~surface~~ mining operation or cyanidation facility when, un-
41 der an existing approved plan, an operator violates the terms of the plan
42 and where immediate and irreparable injury, loss or damage may result to the
43 state, and (2) to recover the penalties and to collect civil damages provided
44 for by law.

45 (f) In addition to the procedures set forth in subsections (a), (d) and
46 (e) of this section, and in addition to the civil penalty provided in subsec-
47 tion (c) of this section, any operator who violates any of the provisions of
48 this chapter or rules adopted pursuant thereto, or who fails to perform the
49 duties imposed by these provisions, or who violates any determination or or-
50 der promulgated pursuant to the provisions of this chapter, shall be liable

1 to a civil penalty of not less than five hundred dollars (\$500) nor more than
2 two thousand five hundred dollars (\$2,500) for each day during which such vi-
3 olation continues, and in addition may be enjoined from continuing such vio-
4 lation. Such penalties shall be recoverable in an action brought in the name
5 of the state of Idaho by the attorney general in the district court for the
6 county where the violation, or some part thereof, occurs, or in the district
7 court for the county wherein the defendant resides.

8 (1) All sums recovered related to the reclamation provisions of this
9 chapter shall be placed in the state treasury and credited to the
10 ~~surface~~ mining reclamation fund, which is hereby created, to be used to
11 reclaim affected lands and to administer the reclamation provisions of
12 this chapter.

13 (2) All sums recovered related to the cyanidation facility closure pro-
14 visions of this chapter shall be placed in the state treasury and cred-
15 ited to the cyanidation facility closure fund, which is hereby created.
16 Moneys in the fund may be expended pursuant to appropriation and used to
17 complete permanent closure activities and to administer the permanent
18 closure provisions of this chapter.

19 (g) Any person who willfully and knowingly falsifies any records, in-
20 formation, plans, specifications, or other data required by the board or
21 willfully fails, neglects, or refuses to comply with any of the provisions of
22 this chapter shall be guilty of a misdemeanor and shall be punished by a fine
23 of not less than one thousand dollars (\$1,000) and not more than five thou-
24 sand dollars (\$5,000) or imprisonment not to exceed one (1) year, or both.

25 (h) Reclamation plans approved by the board as of ~~January 1, 1997~~ July
26 1, 2019, shall be deemed to be in full compliance with the requirements of
27 this chapter. ~~However, the board may periodically review, and revise if~~
28 ~~necessary to meet the requirements of sections 47-1506, 47-1509, 47-1510~~
29 ~~and 47-1511, Idaho Code, the amount, terms and conditions of any bond when~~
30 ~~there is a material change in the reclamation plan or a material change in the~~
31 ~~estimated reasonable costs of reclamation determined pursuant to section~~
32 ~~47-1512, Idaho Code. Any revision to the amount, terms and conditions of a~~
33 ~~bond due to a material change in the reclamation plan shall apply only to the~~
34 ~~affected lands covered by the material change in the reclamation plan.~~

35 ~~(i) A cyanidation facility with an existing permit approved by the de-~~
36 ~~partment of environmental quality under section 39-118A, Idaho Code, as of~~
37 ~~July 1, 2005, shall be deemed to be in full compliance with the requirements~~
38 ~~of this chapter. If there is a material modification or a material expansion~~
39 ~~of a cyanidation facility after July 1, 2005, the provisions of this chapter~~
40 ~~shall apply to the modification or expansion. Provided however, that recla-~~
41 ~~mation or closure related activities at a facility with an existing cyanida-~~
42 ~~tion permit that did not actively add cyanide after January 1, 2005, shall~~
43 ~~not be considered to be material modifications or a material expansion of the~~
44 ~~facility.~~

45 ~~(j) For a permanent closure plan approved by the board after July 1,~~
46 ~~2005, the board shall periodically review, and revise if necessary to meet~~
47 ~~the requirements of this chapter, the amount, terms and conditions of any~~
48 ~~bond when there is a material change in the permanent closure plan or a ma-~~
49 ~~terial change in the estimated reasonable costs of permanent closure deter-~~
50 ~~mined pursuant to section 47-1512, Idaho Code. The board may require a fee~~

1 ~~sufficient to employ a qualified independent party, acceptable to the oper-~~
2 ~~ator and the board, to verify any revised estimate of the reasonable costs of~~
3 ~~permanent closure.~~

4 SECTION 14. That Section 47-1516, Idaho Code, be, and the same is hereby
5 amended to read as follows:

6 47-1516. DEPOSIT OF FORFEITURES AND DAMAGES. All forfeitures and
7 civil damages collected under the provisions of this act shall be deposited
8 with the state treasurer in a special fund to be used by the board for ~~surface~~
9 mined land reclamation purposes.

10 SECTION 15. That Section 47-1517, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 47-1517. CONDUCT OF ACTIVITIES. (a) An operator shall conduct all ex-
13 ploration and mining operations in accordance with all applicable statutes
14 and regulations pertaining to water use and mining safety applicable to ex-
15 ploration and ~~surface~~ mining operations.

16 (b) An operator desiring to operate a cyanidation facility within the
17 state of Idaho shall conduct all related activities in accordance with all
18 applicable statutes and rules related to cyanidation including, but not lim-
19 ited to, section 39-118A, Idaho Code.

20 SECTION 16. That Section 47-1518, Idaho Code, be, and the same is hereby
21 amended to read as follows:

22 47-1518. EFFECTIVE DATE -- APPLICATION OF CHAPTER. (a) The reclama-
23 tion provisions of this chapter shall be in full force and effect on and af-
24 ter May 31, 1971. An surface mine operator shall not be required to perform
25 the reclamation activities referred to in this chapter as to any surface min-
26 ing operations performed prior to May 31, 1972, and, further, shall not be
27 required to perform such reclamation activities as to any pit or overburden
28 pile as it exists prior to May 31, 1972.

29 (b) The cyanidation provisions of this chapter shall be in full force
30 and effect on and after July 1, 2005. The board shall promulgate temporary
31 rules by August 1, 2005, to implement the provisions of this act. A cyanida-
32 tion facility with an existing permit approved by the department of environ-
33 mental quality under section 39-118A, Idaho Code, as of July 1, 2005, shall
34 be deemed to be in full compliance with the requirements of this chapter. If
35 there is a material modification or a material expansion of a cyanidation
36 facility after July 1, 2005, the provisions of this chapter shall apply to
37 the modification or expansion. Provided however, that reclamation or clo-
38 sure-related activities at a facility with an existing cyanidation permit
39 that did not actively add cyanide after January 1, 2005, shall not be consid-
40 ered to be material modifications or a material expansion of the facility.

41 (c) An underground mine operator shall not be subject to this chapter
42 for affected land disturbed by underground mine operations prior to July 1,
43 2019. If there is a significant change to affected land at an underground
44 mining operation after July 1, 2019, the provisions of this chapter shall ap-
45 ply to the significant change.

1 (d) The financial assurance and post-closure provisions of this chap-
2 ter amended in 2019 shall be in force and effect on or after July 1, 2019.
3 Provided that the financial assurance and post-closure provisions of this
4 chapter amended in 2019 shall not apply to:

5 (1) Mining operations currently permitted or authorized to commence
6 operations prior to July 1, 2019; or

7 (2) Any mining operation that has permanently ceased operations prior
8 to July 1, 2019.

9 (e) For mining operations that have submitted maps and plans to state
10 or federal agencies as required by section 47-1506, Idaho Code, but such op-
11 erations have not been approved prior to July 1, 2019, such operations shall
12 have one (1) year after operation approval to submit plans and financial as-
13 urance required by the financial assurance and post-closure provisions of
14 this chapter as amended in 2019.

15 (f) The board shall promulgate temporary rules by August 1, 2019, to im-
16 plement the 2019 amendments to this chapter.

**20.03.02 – Rules Governing ~~Exploration, Surface Mining,~~
~~and Closure of Cyanidation Facilities~~ Mined Land Reclamation**

000. LEGAL AUTHORITY.

Title 47, Chapter 15 (“chapter”), Idaho Code, authorizes the ~~Idaho State Board of Land Commissioners (“Board”)~~ to promulgate rules pertaining to mineral exploration; ~~surface~~ mining operations; reclamation of lands affected by exploration and ~~surface~~ mining operations, including review and approval of reclamation and permanent closure plans; requirements for ~~performance bonds~~ financial assurance for reclamation and permanent closure, and to establish a reasonable fee for reviewing and approving reclamation plans and permanent closure plans ~~for cyanidation facilities~~, 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 ~~to complete permanent closure~~. The Board has delegated to the director of the Department ~~of Lands (“Department”)~~ the duties and powers under the chapter and these rules, ~~provided however~~ the Board retains responsibility for administrative review. (3-30-06)()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 20.03.02, “Rules Governing ~~Exploration, Surface Mining, and Closure of Cyanidation Facilities~~ Mined Land Reclamation,” IDAPA 20, Title 03, Chapter 02. (3-30-06)()

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 ~~surface~~ 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 ~~surface~~ 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. (3-30-06)()

03. 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. (3-30-06)()

- ~~a. Requirements for exploration; (3-30-06)~~
- ~~b. Procedures for approval of a surface mining reclamation plan, including an operating plan, when required by Section 47-1506(b), Idaho Code; (7-1-98)~~
- ~~c. Procedures for approval of a permanent closure plan for cyanidation facilities; (3-30-06)~~
- ~~d. Requirements for performance bonds for postmining reclamation to be posted prior to beginning surface mining operations; (11-1-89)~~
- ~~e. Requirements for performance bonds for permanent closure of cyanidation facilities to be posted prior to beginning the construction and operation of a cyanide ore processing facility; (3-30-06)~~
- ~~f. Reclamation requirements lands disturbed by exploration and surface mining operations; (3-30-06)~~
- ~~g. Permanent closure requirements for cyanidation facilities; and (3-30-06)~~
- ~~h. Procedures for ensuring compliance with the chapter and these rules. (3-30-06)~~

04. Other Laws. Operators engaged in exploration, ~~surface~~-mining 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: (3-30-06)()

a. Idaho water quality standards ~~and waste water treatment requirements~~ established in Title 39, Chapter 1, Idaho Code; IDAPA 58.01.02, “Water Quality Standards ~~and Wastewater Treatment Requirements~~”; and IDAPA 58.01.11, “Ground Water Quality Rule,” administered by the ~~Idaho Department of Environmental Quality (“DEQ”)~~. (3-30-06)()

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. (3-30-06)

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.” (3-30-06)

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. (11-1-89)

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. (3-30-06)

05. Applicability. These rules are to be read and applied in conjunction with the chapter. These rules apply to all exploration, ~~surface~~-mining operations, and permanent closure of cyanidation facilities on all lands in the state, regardless of ownership, ~~with the following exceptions.~~ (3-30-06)()

a. These rules apply to ~~surface~~-mining operations or exploration operations conducted on all lands within the state, regardless of ownership, commenced after the effective date of these rules. These rules ~~shall~~ in no way affect, alter, or modify the terms or conditions of any approved reclamation plan or approved amendment thereto or ~~a performance bond 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 supplemental reclamation plan. (3-30-06)()

b. These rules ~~shall~~ do not apply to: (3-30-06)()

i. Any surface mining operations performed prior to May 31, 1972, ~~and further, a~~ An operator shall will not be required to perform ~~such~~ reclamation activities ~~as to on~~ any pit or overburden pile as it existed prior to May 31, 1972. (3-30-06)()

ii. Mining operations for which the Idaho Dredge and Placer Mining Protection Act requires a permit, or which are otherwise regulated by that act, ~~nor to surface disturbances resulting from underground mining.~~ (3-30-06)()

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. (3-30-06)

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 ~~surface~~ mining plan for the purpose of these rules if they are covered by a valid lease granted by the Board in accordance with Title 47, Chapter 7, Idaho Code and IDAPA 20.03.05, "Rules Governing Riverbed Mineral Leasing," and a valid mineral lease bond; have a valid stream channel alteration permit issued by the Idaho Department of Water Resources; and have a plan of operation for the mineral lease approved by the Department.

(3-30-06)()

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

(3-30-06)

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

(3-30-06)()

ii. Disturb less than two (2) acres ~~are only required to~~ will comply with Subsections 060.06.a. through 060.06.c.

(3-30-06)()

e. A cyanidation facility with a permit approved by the DEQ prior to July 1, 2005, shall be 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.

(3-30-06)

002. WRITTEN INTERPRETATIONS.

The Department maintains written interpretations of its rules which may include, but may not be limited to, written procedures manuals and operations manuals, Attorney General formal and informal opinions, and other written guidance, which pertain to the interpretation of the rules of this chapter. Copies of the procedures manuals and operations manuals, Attorney General opinions, and other written interpretations, if applicable, are available for public inspection and copying at the Idaho Department of Lands, 300 North 6th Street, Suite 103, Boise, Idaho 83720.

(3-30-06)

003. ADMINISTRATIVE APPEALS.

If an operator fails to comply with the provisions of the chapter or these rules, the director may notify the operator of such noncompliance and endeavor to remedy any alleged violation in accordance with Section 47-1513, Idaho Code. If the director determines that administrative action is necessary to correct any alleged violations, up to and including forfeiture of a reclamation or permanent closure ~~bond~~ financial assurance, he shall follow the procedures established in Section 47-1513, Idaho Code.

(3-30-06)()

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference into this rule.

(3-30-06)

005. OFFICE – OFFICE HOURS – MAILING ADDRESS – STREET ADDRESS – WEB ADDRESS.

The principal place of business of the Department ~~of Lands~~ is in Boise, Idaho. The office is located at 300 North 6th Street, Suite 103, Boise, Idaho and is open from 8 a.m. to 5 p.m., Monday through Friday, except legal holidays. The mailing address is: Idaho Department of Lands, P.O. Box 83720, Boise, Idaho 83720-0050. The telephone of the office is (208) 334-0200 and the fax number is (208) 334-3698. The Department's web address is located at www.idl.idaho.gov.

(4-11-19)()

006. PUBLIC RECORDS ACT COMPLIANCE.

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code and are public records.

(3-30-06)

007. -- 009. (RESERVED)

010. DEFINITIONS.

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

~~01. Affected Land. The land area included in overburden disposal areas, mined areas, mineral stockpiles, roads, tailings ponds, and other areas disturbed at the surface mining operation site.~~ (11-1-89)

0201. Approximate Previous Contour. A contour that is reasonably comparable to that contour existing prior to disturbance, or that blends with the adjacent topography. (11-1-89)

0302. Best Management Practices. Practices, techniques, or measures developed, or identified, by the designated agency ~~and identified in the state water quality management plan,~~ as described in IDAPA 58.01.02, “Water Quality Standards ~~and Wastewater Treatment Requirements,~~” 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. (4-11-19)()

~~04. Board.~~ The State Board of Land Commissioners or any Department, commission, or agency that may lawfully succeed to the powers and duties of such Board. (11-1-89)

0503. Chapter. The ~~Idaho Surface Mining~~ **Mined Land Reclamation** Act, Title 47, Chapter 15, Idaho Code. (3-30-06)()

~~06. Cyanidation.~~ The method of extracting target precious metals from ores by treatment with cyanide solution, which is the primary leaching agent for extraction. (3-30-06)

~~07. Cyanidation Facility.~~ That portion of a new ore processing facility, or a material modification or a material expansion of that portion of an existing ore processing facility, that utilizes cyanidation and is intended to contain, treat, or dispose of cyanide containing materials including spent ore, tailings, and process water. (3-30-06)

0804. Department. The Idaho Department of Lands. ~~Its business address is 300 North 6th Street, Suite 103, Boise, Idaho 83720.~~ (7-1-98)()

~~09. DEQ.~~ The Department of Environmental Quality. (11-1-89)

~~10. Director.~~ The head of the Department of Lands or such officer as may lawfully succeed to the powers and duties of said director. It shall also mean such representative as may be designated by the director. (11-1-89)

1105. 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. (3-30-06)

~~12. Exploration Drill Holes.~~ Holes drilled from the surface to locate mineral bodies and to determine the mineability and merchantability thereof. (11-1-89)

~~13. Exploration Operations.~~ Activities performed on the surface of lands to locate mineral bodies and to determine the mineability and merchantability thereof. These activities include, but are not limited to, construction of roads, trenches, and exploration drill holes. (11-1-89)

~~14. Exploration Roads.~~ Roads constructed to locate mineral bodies and to determine the mineability and merchantability thereof. (11-1-89)

~~15. Exploration Trenches.~~ Trenches constructed to locate mineral bodies and to determine the mineability and merchantability thereof. (11-1-89)

~~16. Final Order of the Board.~~ A written notice of rejection, the order of a hearing officer at the conclusion of a hearing, or any other order of the Board where additional administrative remedies are not available. (11-1-89)

1706. Groundwater. Any water of the state which occurs beneath the surface of the earth in a saturated geological formation of rock or soil. (3-30-06)

~~18. Hearing Officer.~~ That person selected by the Board to hear proceedings under Section 47-1513,

~~Idaho Code. It also means that person selected by the director to hear proceedings initiated under Section 110 or Section 160 of these rules. (11-1-89)~~

1907. Land Application. ~~With regard to cyanidation facilities, a~~ process or activity involving application of process water, wastewater, surface water, or semi-liquid material to the land for the purpose of disposal, pollutant removal, or groundwater recharge. ~~(3-30-06)()~~

2008. Material Change. (3-30-06)

~~a. For surface mining, a~~ change which deviates from the approved reclamation plan or permanent closure plan and causes one (1) of the following to occur: ~~(3-30-06)()~~

i. Results in a substantial adverse ~~effect~~effect to the geotechnical stability of overburden disposal areas, topsoil, stockpiles, roads, embankments, tailings facilities, cyanidation facilities or pit walls; ~~(7-1-98)()~~

ii. Substantially modifies surface water management or a water management plan, not to include routine implementation and maintenance of BMPs; ~~(3-30-06)()~~

iii. Exceeds the permitted acreage; or (7-1-98)

iv. Increases overall estimated reclamation costs by more than fifteen percent (15%). (7-1-98)

~~b. For cyanidation facilities, a change which causes one (1) of the following to occur: (3-30-06)~~

~~i. A substantial adverse effect to the geotechnical stability of the cyanidation facilities; (3-30-06)~~

~~ii. The need for a substantial change in the water management plan. (3-30-06)~~

~~iii. Increases in overall estimated permanent closure costs by more than fifteen percent (15%). (3-30-06)~~

b. For underground mines with an approved reclamation plan, a new opening to an underground mine is also a material change. ()

2109. Material Modification or Material Expansion. With regard to cyanidation facilities: (3-30-06)

a. The addition of a new beneficiation process, or a significant change in the capacity of an existing beneficiation process, which was not identified in the original application and that significantly increases the potential to degrade the waters of the state. Such process could include, but is not limited to, heap leaching and process components for milling; or (3-30-06)

b. A significant change in the location of a proposed process component or site condition which was not adequately described in the original application; or (3-30-06)

c. A change in the beneficiation process that alters the characteristics of the waste stream in a way that significantly increases the potential to degrade the waters of the state. (3-30-06)

d. For a cyanidation facility with an existing permit that did not actively add cyanide after January 1, 2005, reclamation and closure related activities shall not be considered to be material modifications or material expansions of the cyanidation facility. (3-30-06)

2210. Material Stabilization. Managing or treating spent ore, tailings, other solids and/or sludges resulting from the cyanidation process in such a manner to minimize waters or all other applied solutions from migrating through the material and transporting pollutants associated with the cyanidation facility ensuring that all discharges comply with all applicable standards and criteria. (3-30-06)

~~23. Mine Panel. That area designated by the operator as a panel of a surface mine on the map submitted pursuant to Section 47-1506, Idaho Code. (11-1-89)~~

~~24. Mined Area. Surface of land from which overburden or minerals have been removed other than by drilling of exploration drill holes. (11-1-89)~~

~~25. Mineral. Coal, clay, stone, sand, gravel, metalliferous and non-metalliferous types of ores, and any other similar, solid material or substance of commercial value to be excavated from natural deposits on or in the earth. (11-1-89)~~

~~26. Mineral Stockpile. Mineral extracted during surface mining operations and retained at the surface mine for future rather than immediate use. (11-1-89)~~

~~27~~**11. Motorized Earth-Moving Equipment.** Backhoes, bulldozers, front-loaders, trenchers, core drills, and other similar equipment. (11-1-89)

~~28~~**12. Neutralization.** Treatment of process waters such that discharge or final disposal of those waters does not, ~~or shall not~~ violate ~~all the applicable standards and criteria~~ surface or ground water quality standards or permits issued by DEQ. (3-30-06)()

~~29. Operator. Any person or persons, any partnership, limited partnership, or corporation, or any association of persons, either natural or artificial, including but not limited to every public or governmental agency engaged in surface mining or exploration operations, or engaged in the operation and/or permanent closure of a cyanidation facility, whether individually, jointly, or through subsidiaries, agents, employees, or contractors and shall mean every governmental agency owning or controlling the use of any surface mine when the mineral extracted is to be used by or for the benefit of such agency. It shall not include any such governmental agency with respect to those surface mining or exploration operations as to which it grants mineral leases or prospecting permits or similar contracts, but nothing herein shall relieve the operator acting pursuant to a mineral lease, prospecting permit or similar contract from the terms of the chapter. (3-30-06)~~

~~30. Overburden. Material extracted by an operator which is not a part of the material ultimately removed from a surface mine and marketed by an operator, exclusive of mineral stockpiles. (11-1-89)~~

~~31. Overburden Disposal Area. Land surface upon which overburden is piled or planned to be piled. (11-1-89)~~

~~32. Peak. A projecting point of overburden. (11-1-89)~~

~~33~~**13. Permanent Closure.** Those activities which result in neutralization, material stabilization, and decontamination of cyanidation facilities ~~and/or the~~ facilities' final reclamation. (3-30-06)()

~~34. Permanent Closure Plan. A description of the procedures, methods, and schedule that will be implemented to meet the intent and purpose of the chapter in treating and disposing of cyanide-containing materials including spent ore, tailings, and process water and in controlling and monitoring discharges and potential discharges for a reasonable period of time based on site-specific conditions. (3-30-06)~~

~~35~~**14. Permit.** When used without qualification, any written authorization, license, or equivalent control document issued by the ~~Department of Environmental Quality-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," ~~governing the location, operation and maintenance, monitoring, seasonal and permanent closure, discharge response, and design and construction of a new cyanidation facility or a material expansion or material modification to a cyanidation facility~~ and those issued pursuant to the application, public participation, and appeal procedures in IDAPA 58.01.25. (3-30-06)()

~~36~~**15. Pilot Facility.** (3-30-06)

a. A testing cyanidation facility that is constructed primarily to obtain data on the effectiveness of the beneficiation process to determine: (3-30-06)

i. The feasibility of metals recovery from an ore; or (3-30-06)

ii. The optimum operating conditions for a predetermined process to extract values from an ore. (3-30-06)

b. A pilot or testing cyanidation facility operated for one (1) year for a single test or two (2) years for multiple tests, during which time no more than ten thousand (10,000) tons of ore are evaluated for the testing process(es), unless the applicant can demonstrate that a greater amount is necessary for a specific purpose in the testing process. (3-30-06)

~~37. Pit. An excavation created by the extraction of minerals or overburden during surface mining operations. (11-1-89)~~

~~3816. Pollutant. Chemicals, chemical waste, process water, biological materials, radioactive materials, or other materials which, when discharged, cause or contribute adverse effects to any beneficial use to water pollution, or for any other reason, may otherwise impact the surface or ground waters of the state. (3-30-06)()~~

~~39. Post Closure. The period after completion of permanent closure when the operator is monitoring the effectiveness of the permanent closure activities. Post closure shall last a minimum of twelve (12) months, but may extend until the cyanidation facility is shown to be in compliance with the stated permanent closure objectives and the requirements of the chapter. (3-30-06)~~

~~4017. Process Waters. Any liquids which are 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. (3-30-06)~~

~~18. Real Property. Land and appurtenances as defined in Section 55-101, Idaho Code. ()~~

~~4119. Reclamation. The process of restoring an area affected by a surface 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. (11-1-89)()~~

~~4220. Revegetation. The establishment of the premining vegetation or a comparable vegetative cover on the land disturbed by surface mining operations. (11-1-89)()~~

~~43. Ridge. A lengthened elevation of overburden. (11-1-89)~~

~~44. Road. A way constructed on a surface mine for the passage of vehicles, including the bed, slopes and shoulders thereof. (11-1-89)~~

~~4521. Small Cyanidation Processing Facility. A cyanidation facility which chemically processes less than thirty-six thousand five hundred (36,500) tons of ore per year and no more than one hundred twenty thousand (120,000) tons of ore for the life of the project at any one (1) permitted cyanidation facility. No person or operator may concurrently hold more than one (1) small cyanidation processing facility permit, if located within ten (10) miles of each other. (3-30-06)~~

~~46. Surface Mine. An area where minerals are extracted by removing the overburden lying above and adjacent to natural deposits thereof and mining directly from the natural deposits thereby exposed. (11-1-89)~~

~~47. Surface Mining Operations. The activities performed on a surface mine in the extraction of~~

~~minerals from the ground, including the excavation of pits, removal of minerals, disposal of overburden, and the construction of haulage roads, exclusive of exploration operations, except that any exploration operations which, exclusive of exploration roads, 1) result during a period of twelve (12) consecutive months in more than five (5) contiguous acres of newly affected land, or 2) which, exclusive of exploration roads, results during a period of twelve (12) consecutive months in newly affected lands consisting of more than ten (10) noncontiguous acres, if such affected land constitutes more than fifteen percent (15%) of the total area of any circular tract which includes such affected land, shall be deemed to be a surface mining operation for the purposes of the act. (11-1-89)~~

4822. Surface Waters. The surface waters of the state of Idaho. (11-1-89)

~~49. **Tailings Pond.** An area on a surface mine enclosed by a man made or natural dam onto which has been discharged the waste material resulting from the primary concentration of minerals in ore excavated from a surface mine. (11-1-89)~~

5023. Treatment. ~~With regard to cyanidation facilities, a~~ Any method, technique or process, ~~including neutralization,~~ designed to change the physical, chemical, or biological character or composition of a waste for the purpose of disposal. (3-30-06)()

5124. 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. (3-30-06)

5225. 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. (3-30-06)

5326. Waters of the State. All the accumulations of water, surface and underground, natural and artificial, public or private, or parts thereof which are wholly or partially within, which flow through or border upon the state. 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. (3-30-06)

5427. Weak Acid Dissociable Cyanide. The cyanide concentration as determined by Method C, Weak Acid Dissociable Cyanide, D2036, the American Society of Testing Materials Book of Standards, "Standard Methods for the Examination of Water and Wastewater," Method 4500 CN⁻ I, or other methods accepted by the scientific community and deemed appropriate by the DEQ. (4-11-19)

011. ABBREVIATIONS.

01. **BMP.** Best Management Practices. (4-11-19)

02. **DEQ.** Department of Environmental Quality. (4-11-19)

03. **U.S.C.** United States Code. (4-11-19)

04. **WAD.** Weak Acid Dissociable. (4-11-19)

012. -- 049. (RESERVED)

050. ADMINISTRATION.

The Department ~~shall will~~ administer these rules under the direction of the director. (3-30-06)()

051. -- 059. (RESERVED)

060. EXPLORATION OPERATIONS AND REQUIRED RECLAMATION.

01. Diligence. All reclamation activities required to be conducted on exploration sites shall 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. (11-1-89)

02. When Exploration Is Surface Mining. Exploration operations may under some circumstances constitute surface mining operations ~~(see Subsection 010.46)~~ as described in Section 47-1503(7), Idaho Code. (3-30-06)(_____)

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. (4-11-19)

04. Contents of Notification. The notification shall include: (3-30-06)

a. The name and address of the operator; (11-1-89)

b. The legal description of the exploration and its starting and estimated completion date; and (3-30-06)

c. The anticipated size of the exploration and the general method of operation. (3-30-06)

05. Confidentiality. Any such notification shall be treated as confidential in accord with Section 180. (3-30-06)

06. Exploration Reclamation (Less Than Two Acres). Every operator who conducts exploration affecting less than two (2) acres shall: (3-30-06)

a. Wherever possible, contour the affected lands to their approximate previous contour; and (11-1-89)

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. (3-30-06)

c. Abandoned exploration drill holes shall be plugged, or otherwise left so as to eliminate hazards to humans and animals. 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 be reclaimed within one (1) year of verification. (3-30-06)

d. 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 ~~re-establish runoff conditions that existed prior to starting exploration, or as is necessary to~~ meet state water quality standards, ~~whichever is the lesser standard. It shall be presumed that state water quality standards will be the applicable standard unless baseline data is provided to rebut the presumption.~~ (3-30-06)(_____)

07. Exploration Reclamation (More Than Two Acres). Reclamation of lands where exploration has affected more than two (2) acres shall be completed as set forth in Subsection 060.06 and the following additional requirements: (3-30-06)

a. Abandoned exploration roads shall 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. (3-30-06)

b. Ridges of overburden shall be leveled so as to have a minimum width of ten (10) feet at the top. (11-1-89)

- c. Peaks of overburden shall be leveled so as to have a minimum width of fifteen (15) feet at the top. (11-1-89)
- d. Overburden piles shall be reasonably prepared to control erosion. (11-1-89)
- e. Abandoned lands affected by exploration shall 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. (3-30-06)
- f. Any water containment structure created in connection with exploration, shall be reasonably prepared so as not to constitute a hazard to humans or animals. (3-30-06)

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. (3-30-06)

061. -- 0687. (RESERVED)

068. APPLICATION FEES

The following fee schedule will be used for all reclamation plan and cyanide closure plans and amendments to those plans. The applicable acreage is based on the permitted area identified in the application:

<u>Type of Plan</u>	<u>Fee (Dollars)</u>
<u>Section 069 of these rules, Reclamation Plan 0 to 5 acres</u>	<u>Five hundred (\$500)</u>
<u>Section 069 of these rules, Reclamation Plan >5 to 40 acres</u>	<u>Six hundred (\$600)</u>
<u>Section 069 of these rules, Reclamation Plan over 40 acres</u>	<u>Seven hundred fifty (\$750)</u>
<u>Section 070 of these rules, Reclamation Plan 0 to 100 acres</u>	<u>One thousand (\$1,000)</u>
<u>Section 070 of these rules, Reclamation Plan >100 to 1000 acres</u>	<u>One thousand five hundred (\$1,500)</u>
<u>Section 070 of these rules, Reclamation Plan >1000 acres</u>	<u>Two thousand (\$2,000)</u>
<u>Section 071 of these rules, Permanent Closure Plan</u>	<u>Five thousand (\$5,000)</u>

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. (3-30-06)

02. No Operator Shall Conduct ~~Surface~~ Mining Operations. No operator shall conduct ~~surface~~ mining operations on any lands in the state until the ~~surface mining~~ reclamation plan has been approved by the director, and the operator has filed a ~~bond~~ financial assurance that meets the requirements of the chapter and these rules. (~~3-30-06~~)()

03. Application Package. The operator must submit a complete application package, for each separate ~~surface~~ mine or mine panel, before the reclamation plan will be approved. Separate ~~surface~~ mines are individual, physically disconnected operations. A complete application package consists of: (~~4-11-19~~)()

- a. An application provided by the director; (7-1-98)
- b. A map or maps of the proposed mining operation which includes the information required under Subsection 069.034; (~~7-1-98~~)()
- c. A reclamation plan, in map and narrative form, which includes the information required under

Subsection 069.0405; and (3-30-06)()

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 ~~as well~~. (3-30-06)()

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

04. Map Requirements. A vicinity map shall 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 ~~surface~~-mining operation site shall be of sufficient scale to show: (3-30-06)()

a. The location of existing roads, access, and main haul roads to be constructed or reconstructed in conjunction with the ~~surface~~-mining operation and the approximate dates for construction, reconstruction, and abandonment; (3-30-06)()

b. The approximate location and names, if known, of drainages, streams, creeks, or water bodies within one thousand (1,000) feet of the ~~surface~~-mining operation; (3-30-06)()

c. The approximate boundaries of the lands to be utilized in the ~~surface~~-mining operations, including a legal description to the quarter-quarter section; (3-30-06)()

d. The approximate boundaries and acreage of the lands that will become affected land as a result of the ~~surface~~-mining operation during the first year of operations; (3-30-06)()

e. The currently planned storage locations of fuel, equipment maintenance products, wastes, and chemicals that will be utilized in the ~~surface~~-mining operation; (3-30-06)()

f. The currently planned location and configuration of pits, overburden piles, crusher reject materials, topsoil storage, wash plant ponds and sediment ponds that will be utilized; (3-30-06)

g. Scaled cross-sections by length and height showing surface profiles prior to mining; and (7-1-98)

h. A surface and mineral control or ownership map of appropriate scale for boundary identification; (7-1-98)

05. Reclamation Plan Requirements. Reclamation plans must be submitted in map and narrative form and include the following: (3-30-06)

a. Where surface waters are likely to be impacted and when requested by the director, documents identifying and assessing foreseeable, site-specific nonpoint sources of water quality impacts upon adjacent surface waters and the BMPs the operator will use to control such impacts during surface mining and reclamation; (3-30-06)

b. Scaled cross-sections by length and height, showing planned surface profiles and slopes after reclamation; (3-30-06)

c. Roads to be reclaimed; (7-1-98)

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; (7-1-98)

e. The planned reclamation of wash plant or sediment ponds; (3-30-06)

f. A drainage control map which identifies the location of BMPs that will be implemented to control erosion and ~~such nonpoint source~~ water quality impacts during ~~surface~~-mining and reclamation activities;

(3-30-06)()

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. (4-11-19)

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. ()

070. APPLICATION PROCEDURE AND REQUIREMENTS FOR OTHER SURFACE-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 surface-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 ~~performance bond~~ financial assurance. (3-30-06)()

02. Application Package. The operator must submit a complete application package for each separate surface-mine or mine panel before the reclamation plan will be approved. Separate surface-mines are individual, physically disconnected operations. A complete application package consists of: (4-11-19)()

a. All items and information required under Section 069 of these rules; (3-30-06)

b. Any additional information required by Subsection 070.04; and (3-30-06)

c. An operating plan, if required by Section 47-1506(b), Idaho Code, prepared in accordance with Subsections 070.05 ~~and 070.06~~ of these rules. (3-30-06)()

03. Map Requirements. Maps shall be prepared in accordance with Subsection 069.04 of these rules. (3-30-06)

04. Reclamation Plan Requirements. Reclamation plans must include all of the information required under Subsection 069.05 and the following additional information: (3-30-06)

a. A description of the planned reclamation of tailings or sediment ponds; and (3-30-06)

b. An estimate of total reclamation cost to be used in establishing ~~bond~~ the financial assurance amount. The cost estimate should include the approximate cost of grading, revegetation, equipment mobilization, labor, and other pertinent costs. (4-11-89)()

c. A description of foreseeable, site-specific impacts from acid rock drainage and the BMPs that will be used to mitigate any impacts from such acid rock drainage. (3-30-06)

d. 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, adits, or stopes; and ()

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

e. A description of post-closure activities. ()

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

will comply with the requirements of the chapter. (3-30-06)

05. Operating Plan Requirements. A complete operating plan shall consist of: (3-30-06)

a. Maps showing: (3-30-06)

i. The location of existing roads and anticipated access and principal haul roads planned to be constructed for ~~surface~~-mining operations. (~~3-30-06~~)()

ii. The boundaries and acreage of the affected lands. (3-30-06)

iii. The planned location of pits, mineral stockpiles, overburden piles and tailings ponds for the ~~surface~~ mining operation. (~~3-30-06~~)()

iv. The location and, if known, the names of all streams, creeks, or water bodies within the area of the affected lands. (3-30-06)

v. The drainage adjacent to the area where the surface is being utilized by ~~surface~~-mining operations. (~~7-1-98~~)()

vi. The approximate boundaries and acreage of the lands that will become affected during the first year of ~~surface~~-mining operations. (~~3-30-06~~)()

b. 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 operating plan. Such information may include, but is not limited to, one (1) or more of the following: (3-30-06)

i. A description of the quantities, size, geologic characteristics, and durability of the materials to be used for final reclamation and armoring. (3-30-06)

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. (3-30-06)

c. The director may, after considering the type, size, and potential environmental impact of the facility, require the operator to prepare a geotechnical analysis and report, signed by an engineer registered in the state of Idaho, which shows that (1) any waste rock or overburden stockpiles, (2) any pit walls proposed to be more than one hundred (100) feet high, or (3) any pit walls where geologic conditions could lead to failure of the wall regardless of the height will be constructed in a manner that is consistent with industry standards to minimize the potential for failure. 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 groundwater accumulation, and the expected seismic accelerations at the site. (3-30-06)

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

01. Permanent Closure Plan Approval Required. No operator shall construct or 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 ~~a bond~~-financial assurance, as required by these rules. (~~3-30-06~~)()

02. Permanent Closure Plan Requirements. A permanent closure plan shall: (3-30-06)

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; (3-30-06)

- b.** Include a timeline showing: (3-30-06)
- 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 responsible for post-closure activities; and (3-30-06)
- 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. (3-30-06)
- 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; (3-30-06)
- 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 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. (3-30-06)
- 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. (3-30-06)
- 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 groundwaters 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 be signed and stamped by a professional engineer registered in the state of Idaho; (3-30-06)
- 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; (3-30-06)
- 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. (3-30-06)
- 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; (3-30-06)
- j.** Provide sufficient detail to allow the operator to prepare an estimate of the reasonable costs to implement the permanent closure plan; (3-30-06)
- 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: (3-30-06)
- i.** Identify the incremental costs of attaining critical phases of the permanent closure plan and a proposed ~~bond~~ **financial assurance** release schedule; (~~3-30-06~~)()
- 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 ~~bond~~ **financial assurance** forfeiture under Section 47-1513, Idaho Code, and include: (~~3-30-06~~)()

(1) All direct and indirect costs expected to be incurred by a third party including, but not limited to, mobilization, labor, materials, equipment, engineering, and demobilization costs; and (3-30-06)

(2) An amount acceptable to the Department but not to exceed ten percent (10%) of the total estimated closure costs, which is intended to cover costs the Department will incur in association with contract administration. (3-30-06)

l. If the proposal is to complete cyanidation facility construction, operation, and/or permanent closure activities in phases: (3-30-06)

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 (3-30-06)

ii. Describe how any required post-closure activities will be addressed during and after each subsequent phase has begun. (3-30-06)

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. (3-30-06)

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. (3-30-06)

04. Application Package for Permanent Closure. An application and its contents submitted to the Department shall 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: (4-11-19)

a. A Department application form completed, signed, and dated by the applicant. This form shall contain the following information: (3-30-06)

i. Name, location, and mailing address of the cyanidation facility; (3-30-06)

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; (3-30-06)

iii. Land ownership status (federal, state, private or public); (3-30-06)

iv. The legal description to the quarter-quarter section of the location of the proposed cyanidation facility; and (3-30-06)

v. The legal structure (corporation, partnership, etc.) and primary place of business of the operator. (3-30-06)

b. Evidence that the applicant is authorized by the Secretary of State to conduct business in the state of Idaho; (3-30-06)

c. A permanent closure plan as prescribed in Subsection 071.02; (3-30-06)

- d. The DEQ application and supporting materials; (3-30-06)
- e. The five thousand dollar (\$5,000) application processing and review fee, as defined in Subsection 071.05.a. (3-30-06)
- 05. Application Fee.** The application fee shall consist of two (2) parts: (3-30-06)
 - a. Processing and review fee. (3-30-06)
 - 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. (3-30-06)
 - 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. (3-30-06)
 - 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: (3-30-06)
 - (1) Review the Department's estimate; (3-30-06)
 - (2) Conduct a hearing where the applicant is allowed to give testimony to the Board concerning the Department's estimate; and (3-30-06)
 - (3) Establish the amount of the application review and processing fee. (3-30-06)
 - 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. (3-30-06)
 - v. Nothing in this section shall extend the time in which the Board must act on a plan submitted. (3-30-06)
 - b. Permanent closure cost estimate verification fee. (3-30-06)
 - i. Pursuant to Sections 47-1506(g) and 47-1513(j), 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. (3-30-06)
 - ii. The applicant shall be 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. (3-30-06)
 - iii. If a federal agency has responsibility to establish the ~~bond~~ 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. (3-30-06)(_____)

072. -- 079. (RESERVED)

080. PROCEDURES FOR REVIEW AND DECISION UPON AN APPLICATION ~~TO PERFORM SURFACE MINING, RECLAMATION, AND ORE PROCESSING USING CYANIDE~~ FOR A RECLAMATION PLAN OR PERMANENT CLOSURE PLAN.

01. Return of Application. (3-30-06)

a. ~~Surface mining~~Mine reclamation. Within thirty (30) days after receipt of a reclamation plan by the Department, an application for ~~surface~~-mining reclamation may be returned for correction and resubmission if either the reclamation plan or mine map(s) are incomplete. Return of an application by the director shall constitute a rejection in accordance with Section 47-1507(b), Idaho Code. ~~(3-30-06)~~(_____)

b. Permanent closure plans for cyanidation facilities. Within thirty (30) days after receipt of a permanent closure plan by the Department, an application for permanent closure of a cyanidation facility may be returned for correction and resubmission, if the permanent closure plan does not meet the requirements of Section 071 of these rules. Return of an application by the director shall constitute a rejection in accordance with Section 47-1507(b), Idaho Code. (3-30-06)

02. Agency Notification and Comments. (3-30-06)

a. Nonconfidential materials submitted under Sections 069, 070, and 071 shall 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. ~~(3-30-06)~~(_____)

b. Upon receipt of a complete application for ~~a~~ reclamation ~~of surface mined areas~~plan or ~~a~~ permanent closure ~~of a cyanidation facility~~plan, the director shall provide notice to the cities and counties where the ~~surface~~ 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 an amended or supplemental 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. ~~(3-30-06)~~(_____)

03. Decision on Reclamation Plans. The director shall review a new reclamation plan or an amended or supplemental reclamation plan pursuant to Sections 47-1507 and 47-1508, Idaho Code. (3-30-06)

a. Approval. (3-30-06)

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) or supplementary plan(s) to an approved reclamation plan is approved or denied and, if approved, the amount of the ~~reclamation bond~~financial assurance required; or ~~(3-30-06)~~(_____)

ii. If the director does not take action within sixty (60) days, a reclamation plan or any amendments or supplementary plans thereof shall be deemed to comply with the chapter, unless the sixty (60) day time period is extended pursuant to Section 47-15~~42~~07 (c), Idaho Code. ~~(3-30-06)~~(_____)

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. (3-30-06)

b. Inspections. The director may determine that an inspection of the proposed ~~surface~~-mining site location is necessary if the inspection will provide additional information or otherwise aid in processing of the application. ~~(3-30-06)~~(_____)

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. (3-30-06)

ii. If weather conditions preclude an inspection of a proposed ~~surface~~ mining operation, the director shall provide written notice to the applicant that review of the reclamation plan or an amended or supplementary plan has been suspended until weather conditions permit an inspection, and that the schedule for a decision shall be extended for up to thirty (30) days after weather conditions permit such inspection in accordance with Section 47-1512~~07~~(c), Idaho Code. (~~3-30-06~~)(_____)

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: (3-30-06)

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; (3-30-06)

b. Approval. (3-30-06)

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 ~~bond~~ financial assurance required; or (~~3-30-06~~)(_____)

ii. If the director does not take action within one-hundred eighty (180) days, a permanent closure plan, or any amendments or supplementary plans thereof, shall be deemed to comply with the provisions of the chapter, unless the one hundred eighty (180) day time period shall be extended in accordance with Section 47-1512~~(d)~~07(c), Idaho Code. (~~3-30-06~~)(_____)

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. (3-30-06)

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. (3-30-06)

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 extended for up to thirty (30) days after weather conditions permit such inspection in accordance with Section 47-1512~~(d)~~07(c), Idaho Code. (~~3-30-06~~)(_____)

05. Nonpoint Source Pollution Monitoring Data. When the director determines, after consultation with the DEQ, that there is a reasonable potential for ~~nonpoint source~~ pollution of adjacent surface and ground waters, the director shall require the operator to provide baseline preproject surface and ground water monitoring information, and furnish additional monitoring data during the life of the project. This provision shall not require any additional baseline preproject monitoring information or ongoing monitoring data where such data is already required to be provided under any federal or state law and is available to the director. (~~3-30-06~~)(_____)

06. Permanent Closure Plan Approval. (3-30-06)

a. The Department may condition its approval on issuance of a permit by the DEQ for the cyanidation facility. (3-30-06)

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. (3-30-06)

c. The permanent closure plan, as approved by the Department in coordination with the DEQ, shall be incorporated by reference into the cyanidation facility permit issued by DEQ as a permit condition and shall be enforceable as such. The operator shall ensure that closure complies with the approved plan and any additional permanent closure requirements as outlined in the permit issued by DEQ. (3-30-06)

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. (3-30-06)

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. (3-30-06)

07. 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 or supplementary plans thereof if: (3-30-06)

a. The application is inaccurate or incomplete; (3-30-06)

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. (3-30-06)

08. 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 be conducted in accordance with Section 110. (3-30-06)

09. 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. (3-30-06)

10. Appeal of Final Order. Any final order of the Board regarding an application for a ~~surface~~ mining reclamation plan or for permanent closure of a cyanidation facility may be appealed as set forth in Section 47-1514, Idaho Code. ~~(3-30-06)~~()

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. ~~(3-30-06)~~()

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 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. (3-30-06)

03. ~~Minor Amendments~~Adjustments. ~~Minor amendments~~Adjustments to an approved reclamation plan may be made by agreement between the director and the operator, if the ~~amendment~~adjustment is consistent with the overall objectives of the approved reclamation plan and so long as surface and ground water quality standards will be met ~~and existing beneficial uses will be protected~~. Adjustments are due to changes that are smaller than material changes. (~~11-1-89~~)()

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: (3-30-06)

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. (3-30-06)

b. Conditions substantially different from those anticipated in the original permit for which the approved permanent closure plan is no longer adequate. (3-30-06)

c. A material change as defined in Subsections ~~010.20.b.i.08~~ and ~~010.20.b.ii~~ of these rules. (~~3-30-06~~)()

02. Modifications at an Operator's Request. Requests from an operator to modify a permanent closure plan shall 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: (3-30-06)

a. A written description of the circumstances that necessitate the amendment; (3-30-06)

b. Data supporting the request; (3-30-06)

c. The proposed amendment; (3-30-06)

d. A description of how the amendment will impact the estimated cost to complete permanent closure pursuant to the chapter; (3-30-06)

e. A cost estimate to implement the amended permanent closure plan, prepared in accordance with Subsection 071.02 of these rules; and (3-30-06)

f. Payment of a reasonable fee as may be determined by the director in accordance with Section 47-15~~12~~08, Idaho Code. (~~3-30-06~~)()

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. (3-30-06)

04. ~~Minor Amendments~~Adjustment. ~~Minor amendments~~Adjustments to an approved permanent closure plan may be made by agreement between the director and the operator, if the ~~amendment~~adjustment is

consistent with the overall objectives of the approved permanent closure plan and so long as surface and ground water quality standards will be met ~~and existing beneficial uses will be protected.~~ (3-30-06)()

092. -- 099. (RESERVED)

100. DEVIATION FROM AN APPROVED RECLAMATION PLAN.

01. Unforeseen Events. If a surface-mining operator finds that unforeseen events or unexpected conditions require immediate change from an approved plan, the operator may continue surface-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. (3-30-06)()

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 plan shall be submitted by the operator within thirty (30) days of the discovery of those conditions. (3-30-06)

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 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 a supplemental application of an existing operation when one (1) or more of the following circumstances arises: (3-30-06)

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 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. (3-30-06)

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 surface-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. (3-30-06)()

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. (3-30-06)

03. Location. A hearing shall be held in the locality of the proposed surface-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. (3-30-06)()

04. Notice of Hearing. The director shall provide at ~~least~~ 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. (3-30-06)()

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. (11-1-89)

a. In the event a hearing is ordered under Section 110, the notice shall describe: (3-30-06)

i. The potentially significant surface water quality impacts from the proposed ~~surface~~-mining operation and the operator's description of the measures that will be used to prevent degradation of adjacent surface and ground waters from ~~nonpoint~~ sources of pollution; or (~~3-30-06~~)()

ii. The objectives of a permanent closure plan that have been submitted for review. (3-30-06)

b. A copy of the application shall be placed for review in a public place in the local area of the proposed ~~surface~~-mining operation or cyanidation facility, in the closest Department area office, and the Department's administrative office in Boise. (~~3-30-06~~)()

06. Hearing Officer. The hearing shall 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. (3-30-06)

07. Consideration of Hearing Record. The Department shall consider the hearing record when reviewing reclamation plans or permanent closure plans for final approval or rejection. (3-30-06)

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. (3-30-06)

a. Within one (1) year of the final addition of new cyanide to the ore process circuit for small cyanidation processing or pilot facilities; or (3-30-06)

b. Within two (2) years of the final addition of new cyanide to the ore process circuit for all other cyanidation facilities; or (3-30-06)

c. If the product recovery phase of the cyanidation facility has been suspended for a period of more than two (2) years. (3-30-06)

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 be of sufficient detail for the directors of the Department and DEQ to issue a determination that permanent closure, as defined by Subsection 010.3313, has been achieved. The permanent closure report shall address: (~~3-30-06~~)()

a. The effectiveness of material stabilization. (3-30-06)

b. The effectiveness of the water management plan and the adequacy of the monitoring plan. (3-30-06)

c. The final configuration of the cyanidation facility and its operational/closure status. (3-30-06)

d. The post-closure operation, maintenance, and monitoring requirements, and the estimated reasonable cost to complete those activities. (3-30-06)

e. The operational/closure status of any land application site of the cyanidation facilities. (3-30-06)

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. (3-30-06)

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. (3-30-06)

h. Ownership and responsibility for the site upon permanent closure during the defined post-closure period. (3-30-06)

i. The future beneficial uses of the land, surface and ground waters in and adjacent to the closed cyanidation facilities. (3-30-06)

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. (3-30-06)

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. (3-30-06)

02. Permanent Closure Report Is Disapproved. The director's determination to approve or disapprove a permanent closure report shall 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: (3-30-06)

a. Errors or inaccuracies in the permanent closure report. (3-30-06)

b. Issues or details which require additional clarification. (3-30-06)

c. Failures to fully implement the approved permanent closure plans. (3-30-06)

d. Failures to ensure protection for public health, safety, and welfare or to prevent degradation of waters of the state. (3-30-06)

e. Outstanding violations or other noncompliance issues. (3-30-06)

f. Other issues supporting the Department's disagreement with the contents, final conclusions or recommendations of the permanent closure report. (3-30-06)

113. -- 119. (RESERVED)

120. ~~PERFORMANCE BOND~~ **FINANCIAL ASSURANCE** REQUIREMENTS FOR ~~SURFACE~~ MINING.

01. Submittal of ~~Bond~~ Financial Assurance Before ~~Surface~~ Mining. Prior to beginning any ~~surface~~ mining on a mine panel covered by a reclamation plan, an operator shall submit to the director, on a ~~surface mining~~ Department mine ~~reclamation~~ bond financial assurance form, a ~~performance bond~~ financial assurance meeting the requirements of this rule. ~~The amount shall be the amount necessary to pay the estimated reasonable costs of reclamation required under the reclamation plan for each acre of land to be affected during the first year of operation, plus ten (10%) percent. No performance bond shall exceed fifteen thousand dollars (\$15,000) for a given acre of affected land unless:~~ If financial assurance is not received by the Department within eighteen (18) months of reclamation plan approval and operations have not begun, the Department will cancel the reclamation plan without prejudice. The operator must then resubmit the reclamation plan application and correct application fee to restart the approval process prior to mining. An extension to the eighteen (18) month period may be granted by the Department for reasonable cause given if the request is received prior to the end of that period. (4-11-19)()

02. Financial Assurance for Operations 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: ()

a. The Board has determined that such ~~performance bond~~ financial assurance is necessary to meet the requirements of Sections 47-1506, 47-1509, 47-1510, and 47-1511, Idaho Code. (3-30-06)()

b. The Board has delivered to the operator, in writing, a notice setting forth the reasons it believes such ~~bond~~ financial assurance is necessary. (7-1-98)()

c. The Board has conducted a hearing where the operator is allowed to give testimony to the Board concerning the amount of the proposed ~~bond~~ financial assurance, as provided by Section 47-1512(c), Idaho Code. This requirement for a hearing may be waived, in writing, by the operator. (3-30-06)()

03. Financial Assurance for Operation With More Than Five (5) Disturbed Acres. The amount of financial assurance shall be the amount necessary for the Board to pay the estimated reasonable costs of reclamation required under the reclamation plan, including indirect costs in subsection 120.04 of these rules. ()

04. Indirect Costs for Reclamation Cost Calculations. Reclamation cost calculations shall include the following indirect costs: ()

a. Mobilization and demobilization costs from the nearest community that has at least two (2) contractors able to perform the reclamation; ()

b. Contractor profit as a percentage of direct costs; ()

c. Contractor overhead as a percentage of direct costs; ()

d. Contractor insurance as a percentage of labor costs; ()

e. Contractor bonding as a percentage of direct costs; ()

f. Contract administration as a percentage of direct costs; ()

g. Re-engineering for mines with direct reclamation costs over five hundred thousand dollars (\$500,000). Re-engineering will be determined as a percentage of direct costs; ()

h. Contingency as a percentage of direct costs; and ()

i. Other site specific costs as appropriate. ()

05. Salvage Value Not Allowed. Reclamation costs will not be reduced by assigning a salvage value to structures or fixtures to be removed during reclamation. ()

0206. Mining Operation Conducted by Public or Government. Notwithstanding any other provision of law to the contrary, the ~~bonding~~ financial assurance provisions of the chapter and these rules shall do not apply to any surface mining operations conducted by a public or governmental agency for maintenance, repair, or construction of a public highway. (3-30-06)()

0307. Annual Bond Financial Assurance Review. At the beginning of each calendar year, the operator shall notify the director of any increase in the acreage of affected land which will result from planned ~~surface~~ mining activity within the next twelve (12) months. A commensurate increase in the ~~bond~~ financial assurance will be required for an increase in affected acreage. Any additional ~~bond~~ financial assurance required shall be submitted on the appropriate ~~bond~~ form within ninety (90) days of operator's receipt of notice from the Department that an additional ~~bond~~ amount is required. In no event shall ~~surface~~ mining operations be conducted that would affect additional acreage

until the appropriate ~~bond~~-form and ~~bond~~-financial assurance has been with the Department. Acreage on which reclamation is complete shall be reported in accordance with Subsection 120.~~07~~10 and after release of this acreage from the plan by the director, the ~~bond may~~-financial assurance will be reduced by the amount appropriate to reflect the completed reclamation. ~~(3-30-06)~~(_____)

0408. Bond Financial Assurance Provided to the Federal Government. Any ~~bond~~-financial assurance provided to the federal government that also meets the requirements of Section 120 shall be sufficient for the purposes of these rules. ~~(3-30-06)~~(_____)

0509. ~~Bond~~ Financial Assurance Reduction. ~~(11-1-89)~~(_____)

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.~~ _____

ab. Upon finding that any land ~~bonded under a reclamation plan covered by financial assurance~~ will not be affected by mining, the operator ~~shall~~will notify the director. The amount of the ~~bond shall~~-financial assurance will be reduced by the amount being held to reclaim those lands. ~~(11-1-89)~~(_____)

bc. Any request for ~~bond~~-financial assurance reduction ~~shall~~will be answered by the director within thirty (30) days of receiving such request unless weather conditions prevent inspection. ~~(11-1-89)~~(_____)

0610. ~~Bond~~ Financial Assurance Release Following Reclamation. Upon completion of the reclamation specified in the plan, the operator ~~shall may~~ notify the director of his desire to secure release from ~~bonding~~ financial assurance. When the director has verified that the requirements of the reclamation plan have been substantially met as stated in the plan, the ~~bond shall~~-financial assurance will be released. ~~(11-1-89)~~(_____)

a. Any request for ~~bond~~-financial assurance release shall be answered by the director within thirty (30) days of receiving such request unless weather conditions prevent inspection. ~~(11-1-89)~~(_____)

b. If the director finds that a specific portion of the reclamation has been satisfactorily completed, the ~~bond~~-financial assurance may be reduced to the amount required to complete the remaining reclamation. The following schedule will be used to complete these ~~bond~~-financial assurance reductions unless the director determines in a specific case that this schedule is not appropriate and specifies a different schedule: ~~(11-1-89)~~(_____)

i. Sixty percent (60%) of the ~~bond~~-financial assurance may be released when the operator completes the required backfilling, regrading, topsoil replacement, and drainage control of ~~the bonded a specific~~ area in accordance with the approved reclamation plan; and ~~(11-1-89)~~(_____)

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 ~~bond~~ financial assurance. ~~(11-1-89)~~(_____)

c. The remaining ~~bond~~-financial assurance shall not be released: ~~(11-1-89)~~(_____)

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 ~~surface~~-mining operations; ~~(11-1-89)~~(_____)

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 ~~bond~~-financial assurance by a new operator; and ~~(11-1-89)~~(_____)

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 ~~bond~~financial assurance by a new operator. (11-1-89)()

d. If an operator provides part of a mine's 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. ()

0711. **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 ~~bond~~financial assurance and cancel the reclamation plan if all deficiencies are satisfactorily corrected within the time specified by the cooperative agreement. (11-1-89)()

~~08.~~ **Bonding Rate.** An operator may petition the director for a change in the initial bond rate. The director will review the petition, and if satisfied with the information presented, a special bond rate will be set based upon the estimated cost that the director would incur should a forfeiture of bond occur and it became necessary for the director, through contracting with a third party, to complete reclamation to the standards established in the plan. (11-1-89)

0912. **Liabilities for ~~Unbonded~~ Reclamation Costs Not Covered by Financial Assurance.** An operator who: (11-1-89)()

a. Departs from his approved reclamation plan by performing an act or omission and such deviation is not subsequently approved; (11-1-89)

b. Does not furnish a ~~bond~~financial assurance required by these rules; ~~and/or~~ (11-1-89)()

c. Is not required to furnish a ~~bond~~financial assurance by these rules, but fails to reclaim;

is in violation of these rules and may be subject to civil penalty under Section 47-1513(c), Idaho Code. The amount of civil penalty ~~shall will~~ be the estimated cost of reasonable reclamation of affected lands as determined by the director. Reasonable reclamation of the site ~~shall will~~ be presumed to be in accordance with the standards established in the approved reclamation plan. The amount of the civil penalty ~~shall be is~~ in addition to those described in ~~Subsection 160-06~~ Section 47-1513(f), Idaho Code. (11-1-89)()

121. ~~PERFORMANCE BOND~~ FINANCIAL ASSURANCE REQUIREMENTS FOR CYANIDATION FACILITIES.

01. **Submittal of ~~Bond~~ Financial Assurance Before Operating a Cyanidation Facility.** Prior to beginning construction or operation of a cyanidation facility, but no later than ninety (90) days after approval of a permanent closure plan, an operator ~~shall will~~ submit to the director, on a Department permanent closure plan ~~bond~~financial assurance form, a ~~performance bond~~financial assurance meeting the requirements of Section 47-1512(a)(2), Idaho Code. The ~~performance bond shall~~ financial assurance will be in an amount equal to the total costs estimated under subsection 071.02.k. of these rules ~~plus ten percent (10%).~~ Upon application to the Department, the operator may apply and the director may approve ~~bonding~~financial assurance for each phase of closure on an incremental basis. If the Department authorizes phased ~~bonding~~financial assurance, then ~~bonding~~financial assurance may increase incrementally commensurate with the additional permanent closure liability. After construction and operation of the initial phase of a cyanidation facility has commenced and after filing by an operator of the initial permanent closure ~~bond~~financial assurance, an operator ~~shall will~~ not construct any component of a subsequent phase or phases of the subject cyanidation facility before filing the additional permanent closure ~~bond~~financial assurance amount that ~~may be is~~ required by the Board. If phased ~~bonding~~financial assurance is not authorized, the operator ~~shall be is~~ required to file the ~~bond~~financial assurance amount required to complete permanent closure of all planned phases prior to any construction. (3-30-06)()

02. **Limits Financial Assurance for Permanent Closure Plans Affecting Five (5) or Less Disturbed Acres.** The Board may require a ~~bond~~financial assurance in excess of five million dollars (\$5,000,000) if the following conditions have been met: (3-30-06)()

a. The Board has determined that such ~~a performance bond~~ financial assurance is necessary to meet the requirements of the chapter; ~~(3-30-06)~~()

b. The Board has delivered to the operator, in writing, a notice explaining the reasons such ~~a performance bond~~ financial assurance is necessary; and ~~(3-30-06)~~()

c. The operator is allowed to give testimony to the Board concerning the amount of the proposed ~~bond~~ financial assurance, as provided by Section 47-1512(d)(3), Idaho Code. This requirement for a hearing may be waived, in writing, by the operator. ~~(3-30-06)~~()

03. Financial Assurance for Permanent Closure Plans Affecting More Than Five (5) Disturbed Acres. The amount of financial assurance shall be the amount necessary for the Board to pay the estimated reasonable costs of reclamation required under the permanent closure plan, including indirect costs in subsection 121.04 of these rules. ()

04. Indirect Costs for Permanent Closure Cost Calculations. Permanent closure cost calculations shall include the following indirect costs: ()

a. Mobilization and demobilization costs from the nearest community that has at least two (2) contractors able to perform the reclamation; ()

b. Contractor profit as a percentage of direct costs; ()

c. Contractor overhead as a percentage of direct costs; ()

d. Contractor insurance as a percentage of labor costs; ()

e. Contractor bonding as a percentage of direct costs; ()

f. Contract administration as a percentage of direct costs; ()

g. Re-engineering for cyanidation facilities with direct reclamation costs over five hundred thousand dollars (\$500,000). Re-engineering will be determined as a percentage of direct costs; ()

h. Contingency as a percentage of direct costs; and ()

i. Other site specific costs as appropriate. ()

05. Salvage Value Not Allowed. Reclamation costs may not be reduced by assigning a salvage value to structures or fixtures to be removed during reclamation. ()

0306. Other Government Agency Bonds-Financial Assurance. Upon a finding by the director that the ~~bond~~ financial assurance amount established by a federal agency is inadequate because it has not included one (1) or more permanent closure tasks required by the state, the Department may require the operator to file an additional ~~bond~~ financial assurance amount, as necessary, to satisfy the requirements of the chapter. ~~(3-30-06)~~()

0407. Bond-Financial Assurance Review. The Department ~~shall~~ will periodically review all ~~performance bonds~~ financial assurances filed for permanent closure to determine their sufficiency to complete the work required by an approved permanent closure plan. ~~(3-30-06)~~()

a. Once every three (3) years, the operator shall submit an updated permanent closure cost estimate to the Department for review. The director will review the updated estimate to determine whether the existing ~~bond~~ financial assurance amount is adequate to implement the permanent closure plan, as approved by the Department. Any resulting change in the ~~bond~~ 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 ~~bond~~-financial assurance amount is adequate to complete permanent closure of the cyanidation facility. (3-30-06)(_____)

b. When the director determines that there has been a material change in the estimated reasonable costs to complete permanent closure: (3-30-06)

i. The director shall will notify the operator in writing of his intent to reevaluate the ~~performance bond~~ financial assurance amount. Within a reasonable time period determined by the Department, the operator shall will provide to the Department a revised cost estimate to complete permanent closure as approved by the Department. (3-30-06)(_____)

ii. Within thirty (30) days of receipt of the revised cost estimate the director shall will notify the operator in writing of his determination of ~~bond~~-financial assurance adequacy. (3-30-06)(_____)

iii. Within ninety (90) days of notification of the director's assessment, the operator shall will make the appropriate adjustment to the ~~bond~~-financial assurance or the director will reduce the ~~bond~~-financial assurance as appropriate. (3-30-06)(_____)

c. The Department may conduct an internal review of the amount of each ~~bond~~-financial assurance annually to determine whether it is adequate to complete permanent closure. (3-30-06)(_____)

d. For ~~bond~~-closure cost reviews conducted pursuant to Subsections 121.047.a. and 121.047.b., the director may employ a qualified independent party to verify the accuracy of the revised estimated costs to complete permanent closure. The qualified independent party shall will be employed and the operator shall will pay a reasonable fee pursuant to Subsection 071.05.b. (3-30-06)(_____)

0508. ~~Bond~~-Financial Assurance Reduction. A ~~performance bond~~-financial assurance for permanent closure may be reduced if, during the Department's review of the ~~performance bond~~-financial assurance pursuant to Subsection 121.047, the estimated costs to complete permanent closure of the subject cyanidation facility will be lower than the amount ~~bonded~~-held at that time. (3-30-06)(_____)

0609. ~~Bond~~-Financial Assurance Release During Permanent Closure. (3-30-06)(_____)

a. A ~~bond~~-financial assurance filed for permanent closure of a cyanidation facility shall will be released according to the schedule in the permanent closure plan. The schedule shall will include provisions for the release of the post closure monitoring and maintenance portions of the ~~bond~~-financial assurance. The schedule may be adjusted to reflect the operator's performance of permanent closure activities and their demonstrated effectiveness. (3-30-06)(_____)

b. Upon completion of an activity required by an approved permanent closure plan, the operator may request in writing a ~~bond~~-financial assurance reduction for that activity. When the director, in consultation with DEQ, has verified that the activity meets the requirements of the permanent closure plan, the ~~bond~~-shall-financial assurance will be reduced by an amount to reflect the activity completed. (3-30-06)(_____)

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 ~~bond~~-financial assurance releases. (3-30-06)(_____)

d. If an operator provides part of a cyanidation facility's 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.
(_____)

0710. Liabilities for ~~Unbonded~~-Permanent Closure Costs Not Covered by Financial Assurance. An operator who is in violation of the chapter or any provision of these rules may be subject to civil penalties under Section 47-1513(⊕), Idaho Code. (3-30-06)(_____)

122. **FORM OF ~~PERFORMANCE BOND~~ 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 ~~bond~~ form supplied by the director. The bond shall 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. (3-30-06)()

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 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 ~~negotiable~~ certificates of deposit of any financial institution authorized to do business in the state. Collateral bonds shall be subject to the following conditions. (3-30-06)()

a. The director shall obtain possession of ~~a collateral bond~~ cash or other negotiable collateral bonds, and, upon receipt, deposit ~~it~~ them with the state treasurer to hold ~~it~~ them in trust for the purpose of bonding reclamation or permanent closure performance. (3-30-06)()

b. The director shall value the collateral at its current market value minus any penalty for early withdrawal, not its face value. (3-30-06)()

c. Certificates of deposit or time deposit receipts shall be 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. (3-30-06)()

d. Amount of an individual certificate of deposit or time deposit receipt shall not exceed the maximum amount insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation or their successors. (3-30-06)()

e. Financial institutions issuing ~~such~~ certificates of deposit or time deposit receipts shall 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. (3-30-06)()

f. Certificates of deposit and time deposit receipts shall be automatically renewable. (3-30-06)()

~~**g.** Certificates of deposit shall be of sufficient amount to ensure that the director could liquidate them before maturity upon forfeiture for the required bond amount, including any penalty for early withdrawal. (3-30-06)~~

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 subject to the following conditions. (3-30-06)

- a. All credits shall be irrevocable and prepared in a format prescribed by the director. (3-30-06)
- 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. (3-30-06)
- 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. (3-30-06)

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 40 acres or less, or a mortgage form approved by the Department. ()

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 68-1, 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. Trusts are also subject to 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 or stock index funds, but not individual stocks or direct investments in the operator's company or parent company. 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 having a Standard and

Poor's rating of AAA or AA or an equivalent rating from a nationally recognized securities rating service. ()

e. Payments into the trust will be made as follows: ()

i. When used to cover reclamation costs, the trust fund will be initially funded in an amount at least equal to the costs estimated in the approved reclamation plan for reclamation of existing surface disturbances covered by the chapter and any surface disturbances to occur in the first year of the trust fund. Annual payments to keep pace with increased disturbance and reclamation costs will occur as needed no later than thirty (30) days after each annual anniversary of the date of the initial payment. ()

ii. When used to cover a portion of reclamation costs in combination with other types of financial assurance, the initial and annuals payment will be the pro-rata amount of the reclamation 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. ()

f. Disbursements from the trust will only occur upon written authorization of the Department. ()

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 licensed in Idaho that 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. If the operator is a partnership or joint venture, each partner or member of the entity will sign an indemnity agreement in favor of the State of Idaho that binds each partner or member who has a beneficial interest, directly or indirectly, in the operator. The indemnity agreement must be signed by the partners or members who are authorized to bind their partnership or joint venture. The indemnity agreement will bind each partner or member jointly and severally. The operator must provide a copy of the agreement to the Department with an affidavit certifying that such an agreement is valid under all applicable federal and state laws. ()

f. 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. ()

g. The operator, or parent company guarantor, is required to either complete the approved reclamation or 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 Sections 120 or 121 of these rules. Any indemnity agreement under forfeiture will operate as a judgment against those parties liable under the indemnity agreement. ()

h. 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. ()

i. 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. ()

j. 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 (i) in this Section will then apply. ()

0407. Blanket ~~Bond~~Financial Assurance. Where an operator is involved in more than one (1) ~~surface mining operation-reclamation plan or permanent closure plan~~ permitted by the Department ~~or more than one (1) cyanidation facility operation permitted by the DEQ and for which a permanent closure bond is required~~, the director may accept a blanket ~~bond~~-financial assurance in lieu of separate reclamation or permanent closure ~~bonds~~-financial assurances under the approved plans. The amount of such ~~bond~~-financial assurance shall be equal to the total of the requirements of the separate ~~bonds~~-financial assurances being combined into a single ~~bond~~-financial assurance, as determined pursuant to Section 47-1512, Idaho Code, and in accordance with Sections 120 and 121 of these rules. The ~~bonded~~-principal shall be liable for an amount no more than the ~~bond~~-financial assurance filed for completion of

reclamation activities or permanent closure activities if the Department takes action against the ~~bond~~ **financial assurance** pursuant to Section 47-1513, Idaho Code and Section 123 of these rules. (3-30-06)()

~~05. Notice of Cancellation. Any notice of cancellation by a surety company shall comply with the provisions of Section 47-1512(f), Idaho Code. (3-30-06)~~

~~06. Revocation of Surety License. If a surety's Idaho business license is suspended or revoked, the operator shall comply with the provisions of Section 47-1512(g), Idaho Code. (3-30-06)~~

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. ()

123. FORFEITURE OF ~~BOND~~ **FINANCIAL ASSURANCE.**

A ~~bond~~ **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. (3-30-06)()

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 responsible for the past operator's obligations under the chapter, these rules, and the reclamation plan. ~~When a replacement bond is submitted relative to an approved surface mining reclamation plan, the following rider must be filed with the Department as part of the replacement bond before the existing bond 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 surface mining reclamation plan [number], both prior to and subsequent to the date of this rider."~~ (3-30-06)()

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 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: (3-30-06)

a. File a notarized assumption of permanent closure plan form as prescribed by the Department; and (3-30-06)

b. File a replacement permanent closure ~~bond~~ **plan financial assurance** on a form approved by the Department ~~must be filed with the Department as part of the replacement bond before the existing bond will be released. The following rider must be filed as part of the replacement bond before the existing bond will be released: "[Surety company or principal] understands and expressly agrees that the liability under this bond shall extend to all acts for which permanent closure activities must be completed in connection with permanent closure plan [number], both prior to and subsequent to the date of this rider."~~ (3-30-06)()

131. -- 139. (RESERVED)

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

~~Enumeration of a practice or act in Section 140 shall not be construed to require its specific inclusion in a reclamation or permanent closure plan. 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. (3-30-06)()

01. Nonpoint Source Control. (3-30-06)

a. Appropriate BMPs for nonpoint source controls shall be designed, constructed, and maintained with respect to site-specific ~~surface~~ 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, ~~but shall not be required to do more than is necessary to preserve the condition of runoff from the affected land or the cyanidation facility prior to conducting any exploration, surface mining or cyanidation facility operations. These measures shall be among the first to be taken, if necessary, to protect water quality.~~ State water quality standards, ~~including protection of existing beneficial uses~~ as administered by DEQ, shall be the standard that must be achieved by BMPs ~~unless the operator can show, and the director determines, that a lesser standard existed in the area to be affected prior to the commencement of the subject surface mining or exploration operations.~~ (3-30-06)()

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. (4-11-19)

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 ~~surface~~ mining or exploration operations, whichever is the ~~lesser~~ 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: (3-30-06)()

- a. Keeping the disturbed area to a minimum at any given time through progressive reclamation; (3-30-06)
- b. Shaping waste to help reduce the rate and volume of water runoff by increasing infiltration; (3-30-06)
- c. Retaining sediment within the disturbed area; (3-30-06)
- d. Diverting surface runoff around the disturbed area; (3-30-06)
- e. Routing runoff through the disturbed area using protected channels or pipes so as not to increase sediment load; (3-30-06)
- 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 (3-30-06)
- g. Use of adequate sediment ponds, with or without chemical treatment. (3-30-06)

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 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. (3-30-06)

04. Overburden/Topsoil. To aid in the revegetation of affected lands where ~~surface~~ 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 be stockpiled and protected from erosion and contamination until such areas become available. (3-30-06)()

a. Overburden/Topsoil Removal. (11-1-89)

i. Any overburden/topsoil to be removed should be removed prior to any other mining activity to prevent loss or contamination; (11-1-89)

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 (3-30-06)

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. (3-30-06)

b. Topsoil Storage. Topsoil stockpiles shall be placed to minimize rehandling and exposure to excessive wind and water erosion. Topsoil stockpiles shall 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. (11-1-89)

c. Overburden Storage. Stockpiled ridges of overburden shall be leveled in such a manner as to have a minimum width of ten (10) feet at the top. Peaks of overburden shall be leveled in such a manner as to have a minimum width of fifteen (15) feet at the top. The overburden piles shall be reasonably prepared to control erosion using best management practices; such activities may include terracing, silt fences, chemical binders, seeding, mulching or slope reduction. (7-1-98)

d. Topsoil Placement. Abandoned affected lands shall 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 be timed so that seeding, or other protective measures, can be readily applied to prevent compaction and erosion. (3-30-06)

e. Fill. Backfill and fill materials should be compacted in a manner to ensure stability. (3-30-06)

05. Roads. (11-1-89)

a. Roads ~~shall~~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. (3-30-06)()

b. All access and haul roads ~~shall~~must be adequately drained. Drainage structures may include, but are not limited to, properly installed ditches, water-bars, cross drains, culverts, and sediment traps. (11-1-89)()

c. Culverts that are to be maintained for more than one (1) year ~~shall~~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. (11-1-89)()

d. Roads and water control structures ~~shall~~will be maintained at periodic intervals as needed. Water control structures serving to drain roads ~~shall~~must not be blocked or restricted in any manner to impede drainage or significantly alter the intended purpose of the structure. (11-1-89)()

e. Roads that will not be recontoured to approximate original contours upon abandonment ~~shall~~will be cross-ditched and revegetated, as necessary, to control erosion. (3-30-06)()

f. Roads that are not abandoned and continue to be used under the jurisdiction of a governmental or

private landowner, ~~shall~~ will comply with the nonpoint source sediment control provisions of Subsection 140.02 until the successor assumes control. (3-30-06)(_____)

06. Backfilling and Grading. (11-1-89)

a. Every operator who conducts ~~surface~~ 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 be revegetated in accordance with Subsection 140.11. (3-30-06)(_____)

b. An operator who conducts ~~surface~~ 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. (3-30-06)(_____)

c. Backfill and fill materials should be compacted in a manner to ensure mass and surface stability. (7-1-98)

d. After the disturbed area has been graded, slopes will be measured for consistency with the approved reclamation plan or the permanent closure plan. (3-30-06)

07. Disposal of Waste in Areas Other Than Mine Excavation. Waste material not used to backfill mined areas shall be transported and placed in a manner designed to stabilize the waste piles and control erosion. (3-30-06)

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. (11-1-89)

b. All surface water flows within the disposal area shall 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 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. (11-1-89)

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. (11-1-89)

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. (3-30-06)

e. Unless adequate drainage is provided through a fill area, all surface water above the fill shall be diverted away from the fill area into protected channels, and drainage shall not be directed over the unprotected face of the fill. (11-1-89)

f. The operator shall conduct revegetation activities with respect to such waste piles in accordance with Subsection 140.11. (3-30-06)

08. Settling Ponds; Minimum Criteria. (11-1-89)

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. (11-1-89)

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. (11-1-89)

c. Emergency Spillway. In addition to the sediment storage volume and water detention time, settling ponds shall 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. (11-1-89)

09. Tailings Impoundments. All tailings, dams, or other types of tailings impoundments shall be designed, constructed, operated, and decommissioned so that upon their abandonment, the dam and impoundment area will not constitute a hazard to human or animal life. (11-1-89)

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. (11-1-89)

b. Topsoil shall be removed from the area to be affected by the impounding structure and tailings reservoir in accordance with Subsection 140.04. (3-30-06)

c. Abandonment and Decommissioning of Tailings Impoundments. (3-30-06)

i. Dewatering. Tailings ponds shall be dewatered to the extent necessary to provide an adequate foundation for the approved post-mining use. (3-30-06)

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 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. (3-30-06)

iii. Detoxification. Hazardous chemical residues within the tailings pond shall be detoxified or covered with an adequate thickness of non-toxic material, to the extent necessary to achieve water quality standards in adjacent surface waters. (3-30-06)

iv. Reclamation. After implementing the required dewatering, detoxification, and surface drainage control measures, the reservoir and impounding structure shall 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. (3-30-06)

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 required to conform with the Idaho Dam Safety Act, Sections 42-1710 through 42-1721, Idaho Code, if applicable. (3-30-06)

10. Permanent Cessation and Time Limits for Planting. (11-1-89)

a. Seeding and planting of affected lands and/or a permanently closed cyanidation facility should be conducted during the first normal period for favorable planting conditions after final seedbed preparation. (3-30-06)

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 shall begin within one (1) year after the ~~surface~~-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 shall 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. (11-1-89)()

c. An operator shall be presumed to have permanently ceased ~~surface~~-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 ~~surface~~-mining operations and desires to defer final reclamation until after its subsequent use, the operator shall 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 ~~surface~~-mining operations will not be continued within a reasonable period of time, the director shall proceed as though the ~~surface~~-mining operation has been abandoned, but the operator shall be notified of such decision at least thirty (30) days before taking any formal administrative action. ~~(11-1-89)~~(_____)

11. Revegetation Activities. (11-1-89)

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 ~~surface~~-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. ~~(3-30-06)~~(_____)

b. Unless otherwise specified in the approved reclamation or permanent closure plan, the success of revegetation efforts shall be measured against the existing vegetation on site prior to the ~~surface~~-mining or cyanidation facility operation, or against an adjacent reference area supporting similar types of vegetation. ~~(3-30-06)~~(_____)

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. (11-1-89)

ii. For purposes of this rule, ground cover shall be 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; (11-1-89)

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. (3-30-06)

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. (11-1-89)

v. For previously mined areas that were not reclaimed to the standards required by Section 140, and which are affected by the ~~surface~~-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 ~~(3-30-06)~~(_____)

vi. Vegetative cover shall not be less than that required to control erosion. (11-1-89)

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. (11-1-89)

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. (3-30-06)

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. (11-1-89)

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 be protected from erosion by vegetation, chemical, or other acceptable means during establishment of the shrubs. (11-1-89)

g. Reforestation. Tree stocking of forestlands should meet the following criteria: (3-30-06)

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; (11-1-89)

ii. Trees shall be established for two (2) full growing seasons after cessation of any soil amendments and irrigation before they are considered to be established; and (11-1-89)

iii. Forestlands undergoing revegetation with trees should be protected from erosion by vegetation, chemical binders, or other acceptable means during seedling establishment. (11-1-89)

h. Revegetation is not required on the following areas: (11-1-89)

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; (11-1-89)

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; (3-30-06)

iii. Any mined area or overburden stockpile, where lakes are formed by rainfall or drainage runoff from adjoining lands; (3-30-06)

iv. Any mineral stockpile; (11-1-89)

v. Any exploration trench which will become a part of a pit or an overburden disposal area; and (3-30-06)

vi. Any road which is to be used in mining operations, so long as the road is not abandoned. (11-1-89)

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. (3-30-06)

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. (3-30-06)

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 ~~bond~~ financial assurance, notify the operator, and any authority to conduct any ~~surface~~ mining operations under the subject plan shall terminate. (3-30-06)()

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 ~~permanent closure bond~~ financial assurance in accordance with Subsection 121.0609. (3-30-06)()

151. -- 159. (RESERVED)

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

01. **Five (5) Year Updates.** The Department may require permitted mines 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 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. **Right of Inspection.** Authorized officers of the Department of Lands, upon presentation of appropriate credentials, shall have the right to enter upon lands affected or proposed to be affected by exploration or surface mining operations to determine compliance with these rules. Inspections shall be conducted at reasonable times in the presence of the operator or his authorized employee or representative. The operator shall make such a person available for the purpose of inspection. This rule shall not prevent the Department from making an inspection of the site if the operator fails to make a representative available on request.~~ (11-1-89)

0201. ~~Bond~~ Financial Assurance Forfeiture. Upon request by the director, the attorney general may institute proceedings to have the ~~bond-financial assurance~~ for reclamation or permanent closure forfeited for violation of an order entered pursuant to Section 47-1513, Idaho Code and these rules. (3-30-06)()

0302. Civil Penalty. An ~~unbonded~~ 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, ~~shall~~ will be subject to a civil penalty as authorized by Section 47-1513(c), Idaho Code. (3-30-06)()

0403. Injunctive Procedures. The director may seek injunctive relief and proceed with legal action, if necessary, to enjoin a ~~surface~~ 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 ~~shall~~ will follow the procedures established in Section 47-1513, Idaho Code. (3-30-06)()

0504. 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. (3-30-06)

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. (3-30-06)

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"). (3-30-06)

~~02. Public Inspection. Except as provided in Section 180 or Title 9, Chapter 3, Idaho Code, information obtained by or submitted to the Department pursuant to these rules will be available to the public for inspection and copying during normal office hours. Anyone who requests assistance from the Department to collect, copy or mail public information must tender, in advance, the reasonable cost of those services. (3-30-06)~~

~~03. Information Not Subject to Public Inspection. Notice of exploration as required under Section 060 and any materials submitted to the Board, the director, or the Department as confidential shall not be disclosed by the Board, director, or Department employees to any person other than the Board, director, and employees of the Department without the written permission of the operator. (3-30-06)~~

0402. 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. (3-30-06)

0503. Plans and BMPs. An operator ~~shall~~ 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 ~~and protect existing beneficial uses of waters of the state~~. Confidential portions of reclamation or permanent closure plans may be shared with DEQ in its coordinating role under these rules, as reasonably necessary. (3-30-06)()

181. -- 189. (RESERVED)

190. DEPOSIT OF FORFEITURES AND DAMAGES.

All fees, penalties, forfeitures, and civil damages collected pursuant to the chapter, ~~shall~~will be deposited with the state treasurer in the following accounts as appropriate: ~~(3-30-06)(_____)~~

01. Surface-Mine Reclamation Fund. The ~~surface~~ mine reclamation fund to be used by the director for ~~surface~~ mined land reclamation purposes; ~~or~~ and to administer the reclamation provisions of the chapter and these rules. ~~(3-30-06)(_____)~~

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. ~~(3-30-06)(_____)~~

191. -- 199. (RESERVED)

200. COMPLIANCE OF EXISTING RECLAMATION PLANS.

01. These rules, upon their adoption, shall apply as appropriate to all existing ~~surface~~ mining operations, but ~~shall~~will not affect the validity or modify the duties, terms, or conditions of any existing approved reclamation plan or impose any additional obligations with respect to reclamation upon any operator conducting ~~surface~~ mining operations pursuant to a reclamation plan approved prior to adoption of these rules unless amended under Section 090. ~~(3-30-06)(_____)~~

02. 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. (_____)

03. 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)