

Response to Comments Received May 15 - July 15, 2019		
Comment	Rule Section	Response
HB 141 never intended to expand IDL's authority to regulate water quality.	General	IDL agrees that IDEQ sets water quality standards in Idaho. The path to achieving those standards at a permitted mine must be required by the rules. If not, then IDL cannot require the bonding needed to ensure that a mine is properly reclaimed and post closure is addressed.
HB 141 did not expand IDL's authority to regulate water quality impacts from mining operation. Rather, HB 141 expanded financial assurance requirements for mine operations to ensure adequate funds were provided to address water management at mines.	010.; 069.05.a; 70.04; 140.03;	IDL can only hold financial assurance for actions required by rule or by an approved reclamation plan. To hold financial assurance for water management, the rules must require a description of water management to the extent needed based on a plan's proposed actions.
The provisions of Idaho Code 47-1506(c) regarding Operating Plans on federal lands should be incorporated into the rule, with clarifications regarding federal mineral and surface ownership. It is unclear how this is addressed in the rule.	001 Scope	Operating plan and reclamation plan are not defined, and a number of requirements overlap in Subsections 070.04 (reclamation plan) and 070.05 (operating plan). This could be clarified more. A reference to Idaho Code 47-1506(b) is in Subsection 070.02.c, this may need to be changed.
Clarity is needed here and throughout to make sure the rules apply to all mining operations and cyanidation facilities.	001.05 Applicability	Some of the was done in the Temporary Rule, but we look at this more during further negotiations.
Please add a new subsection to 001.05.b as follows: Any activities at a mining operation that are addressed in a CERCLA order, including any water management releases to the environment and any required financial assurance for such activities.	001.05 Authorities	CERCLA does not supercede Idaho's authority under the statute or these rules. Idaho Code § 47-1512(n) only relates to bonding and states "Any mining operation that is addressing water management, and any releases to the environment through a comprehensive environmental response, compensation and liability act (CERCLA) order, including any required financial assurance, shall not be required to submit financial assurance to the board for any activities covered by a CERCLA order". In addition, IDAPA 20.03.02.120.08 states "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." This already addresses any bonds held under CERCLA.

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Exempting underground mines that existed prior to July 1, 2019 leaves taxpayers at risk, and this exemption should be removed.	001.05.b.iv	The exemption is in House Bill 141, so it is in statute. Rules cannot override statutory authority.
Definitions should be kept in the rule, even if they are in the statute	010	With the Governor's Red Tape Reduction Act, this is not an option.
Do not change the definition of "land application" to include all mine operations.	010.07 Land Application	Land application is a common method of disposing of excess water, and its use by the industry is not restricted to cyanidation facilities.
A new underground opening should not constitute a material change.	010.08b Material Change	A new mine opening must be covered by financial assurance. In order for that to occur, it must be treated as a material change so the reclamation plan can be amended.
Water management plan and water balance are terms that should be restricted to cyanidation facilities.	010.24 and 25 Water Balance and Water Management	These are commonly used for all large mines regardless of the type of ore processing used.
When is exploration considered surface mining?	60.02 Exploration	This is defined in statute under the definition of "mining operations" in Idaho Code 47-1503(7).
IDL's role to address nonpoint source impacts from mining operations did not change in HB 141.	069.05.a	HB 141 deleted all reference to nonpoint source impacts, and replaced it with a broader authority over all potential water quality impacts.
Information is needed in the plan to address water quality impacts and management plans	070.04.c&d	IDL agrees.
Please revise to read: "Location and dimensions of all surface mine opening such as vents, shafts and adits." The Rule only applies to surface impacts from underground mines.	070.04.e.i Underground Mine Requirements	Wording in the Temporary Rule was adjusted to address this comment. 070.04.d.i now reads "Location and dimensions of all underground mine openings at the ground surface, including but not limited to vents, shafts, adits, or stopes"
The 18-month bonding deadline needs more flexibility.	120.01 Financial Assurance Deadline	Extensions are provided for: "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."

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Financial assurance must be submitted before plan approval	120.01	That requirement is not in statute. IDL only has 60 days to either approve or deny a plan if the application is complete. We can discuss further in negotiated rulemaking how to better time plan approvals and financial assurance.
Strike g and h from indirect costs	120.04 and 121.04 Indirect costs	These are standard indirect costs used by other western states and the federal agencies. These specific line items are needed to ensure that IDL has sufficient funds to contract out reclamation when required.
The timeframe for the financial assurance review is not specified, as other states and the federal agencies do. Three to five years is common.	120.07	This subsection requires an operator to keep their financial assurance updated on a yearly basis. Financial assurance must be submitted prior to expanding a mine past the level of disturbance covered by existing financial assurance. The five year minimum reviews are covered in Subsection 155.01.
A more rigorous review by an independent third party is needed.	120.07	This may be more appropriate for the minimum five-year review in Subsection 155.01, or even the plan review process in Section 080. IDL must be able to recover the costs of a third party review from the operator, which will require more rule negotiations and possibly additional legislation.
Strike "initial" so an operator can request bond reduction at any time	120.09 Financial Assurance Reduction	Section 120.08 is specifically for requested reductions in the initial bond amount before operations have started, or bond reductions when less land will be disturbed. This Subsection was moved up from 120.08, where the word "initial" has been in place since 1989. Bond reduction requests due to reclamation are described in 120.10.
Language for financial assurance release needs to more closely align with HB141	120.10 Financial Assurance Release Following Reclamation	Adjustments were made.
Remove "Corporate" from "Surety Bond"	122.01 Surety Bond	This is a good suggestion and will be brought forward in further negotiations.

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Montana and New Mexico have provisions that Idaho should consider adopting	122.01 Surety Bond	Idaho has similar provisions: IDAPA 122.01 requires the surety company to be licensed in the state of Idaho, and requires an IDL form; Idaho Code 47-1512(f) requires 90 days notice of cancellation; Idaho Code 47-1512(f) and (g) allow IDL to issue a cease and desist if replacement financial assurance is not provided in a timely manner or if the surety company can no longer provide financial assurance. Lastly, IDL has never had a problem cashing a surety bond.
Real property is problematic as a form of collateral bond, and additional protections are needed. New Mexico has better protections.	122.02 Real Property	IDL agrees that Real Property has some potential pit falls as a form of collateral. Subsection 122.04 attempts to address some of these pit falls, and several of these requirements are from the New Mexico rules: The selling expenses can be deducted from the fair market value (122.04.a.i); A licensed appraiser selected by IDL must do a timely appraisal, and the operator must pay for it (122.04.a.i); Reappraisal must be done at least every three years (122.04.a.i); IDL must have a perfected, first lien security interest with a deed of trust or mortgage form approved by IDL (122.04); Real property must be located in Idaho (122.04); Real property may be rejected if it is located inside the permitted mine area (122.04.b); Operator must provide a legal description, site improvement survey plat, proof of title, title binder, and Phase 1 environmental assessment (122.04.a.ii through a.v).
The need for this requirement is not clear	122.05.a Trust Funds	Letters of Credit have this same requirement, and it seemed prudent to do so for Trust Funds. IDL can have our legal staff review this to determine if it is needed for Trust Funds.
The rule should allow federal agencies to be a co-beneficiary with the state so the trust fund could be recognized as acceptable financial assurance for both agencies	122.05 Trust Funds	Great idea, we will attempt to incorporate this.
Bond rating should be up to the Trustee. Delete this section.	122.05.d Trust Funds	This rating is used by BLM to minimize risk. Lower bond ratings may give higher returns, but they also carry more risk. Equities are a better investment for increasing returns with lower risk.

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Phased payment into the trust should be included as described in HB141 and as allowed in IDEQ solid and hazardous waste rules.	122.05.e Trust Funds	Phased payment is allowed in this paragraph. The amount of the trust at any point in time, however, must be at least equal to the estimated reclamation costs that it is covering. Annual payments may then be made to keep up with each year's construction activities. Or, if used for post closure costs, a payment schedule will be agreed upon to have the complete post closure sum when the end of mining is predicted to occur. Other state's agencies have similar requirements.
Disbursements from the trust related to reclamation should be governed by Idaho Code 47-1512(h)	122.05.f Trust Funds	Agreed for disbursements related to financial assurance release due to completed reclamation, and Idaho Code 47-1512(h) requires approval by the Department before such release. Trust funds have other potential reasons for disbursements due to their nature, and this paragraph is directed at these other reasons. Any management costs, releases due to trust performance outpacing reclamation costs, or other releases must also be approved by the Department. This is a similar requirement for BLM (43 CFR 3809.556(c)), Pennsylvania (PAC 86.158(f)(2)(iv)), and New Mexico (19.10.12.1208.E.2.h).
The United States Forest Service does not recognize corporate guarantees as a valid form of financial assurance.	122.06 Corporate Guarantees	Understood, neither does the Bureau of Land Management. This will restrict their use in Idaho to private lands. They are allowed by Idaho Code 47-1512.
Corporate guarantees should not be allowed at all, or restricted to 20% of the overall financial assurance for a plan.	122.06 Corporate Guarantees	Corporate guarantees are specifically allowed by Idaho Code 47-1512(k), so they must be allowed by these rules. IDAPA 122.06.a restricts their use up to 50% of reclamation costs, and excludes post-closure costs. Anything more restrictive than this may be seen as not complying with legislative intent and runs the risk of being rejected by the legislature.
Corporate guarantees should not be allowed to be used for post closure costs.	122.06 Corporate Guarantees	That is in paragraph 122.06.a

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Ratio of assets to liabilities should be 2:1 for companies providing a corporate guarantees	122.06.c.iii Corporate Guarantees	The financial test in the rule using an asset:liability ratio of 1.5:1 is adopted from the financial test used in Nevada for mine reclamation corporate guarantees. Changing a financial test that was developed in conjunction with the tests in c.i and c.ii could result in an unattainable standard, thus not meeting legislative intent.
Liabilities should never be allowed to exceed net worth for a company providing a corporate guarantee	122.06 Corporate Guarantees	Agencies examined that allow corporate guarantees do not have this specific financial test. Some did include liability:net worth ratios of 2.5 or less (Pennsylvania, Office of Surface Mining, EPA under RECRA), or 2 or less (Arizona, Nevada). We followed the Nevada tests. A number of financial tests are included in paragraphs 122.06.c and d.
A company providing a corporate guarantee must have at least 90% of its assets in the United States.	122.06 Corporate Guarantees	06.d.iii states "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." This financial requirement came from Nevada and Arizona. Changing this requirement may have unknown consequences. Within the agencies examined that allow corporate guarantees, only Pennsylvania had this 90% requirement as a stand alone test.
A company providing a corporate guarantee must have a bond rating of AAA or better as listed by Moody's or Standard & Poors	122.06 Corporate Guarantees	While a financial test using bond ratings is used by some agencies for corporate guarantees, the rulemaking participants could not agree on a bond rating. AAA is an extremely strong rating. Other agencies vary a lot by going down to A (above average), BBB (average), or baa (average). As a result, we chose to adopt the Nevada financial tests which do not use bond ratings.
Operators must be required to notify IDL immediately if their financial fitness falls below any required standards	122.06 Corporate Guarantees	Paragraph 06.i requires this.

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Replacement bonding must be submitted within 30 days when financial fitness falls below the financial tests	122.06 Corporate Guarantees	Agencies examined that allow corporate guarantees have deadlines of 90 (Pennsylvania and Office of Surface Mining) or 120 days(Arizona, Wyoming, EPA under RCRA). 30 days is likely too short for larger amounts. Even surety bonds and Letters of Credit can take longer to obtain.
Strike "licensed in Idaho" for audited financial statements.	122.06.c Corporate Guarantees	Similar to engineering designs, it is important that the professionals providing these critical services are licensed in Idaho. If irregularities are discovered in these professionals' work, the state may need to take action against them. If they are not licensed in Idaho, then the state cannot effectively take meaningful actions against them.
The need for this requirement is not clear	122.06.e Corporate Guarantees	Where is this from? RCRA, Nevada?
Insert "annual" in the update of financial information	122.06.h Corporate Guarantee	Done for the Temporary Rule.
HB 141 did not expand the definition of BMPs and did not expand IDL's role beyond addressing nonpoint source impacts from mine operations. How a mine operator will manage stormwater and otherwise comply with water quality standards will be regulated by IDEQ.	140.03	HB 141 deleted all reference to nonpoint source impacts, and replaced it with a broader authority over all potential water quality impacts. IDEQ does not have authority to require financial assurance in regards to maintaining water quality standards. A proactive approach to meeting water quality standards at a mining operation starts with the mine planning and permitting process. Many aspects of a mine are designed specifically to minimize or eliminate potential water quality impacts.