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Sent via email to: rulemaking@idl.idaho.gov

May 15, 2019

Mr. Eric Wilson
Bureau Chief
Idaho Department of Lands
300 N. 6th Street, Suite 103
Boise, ID 83702

Dear Mr. Wilson:

The Idaho Department of Lands (Lands) has initiated a rulemaking to implement House Bill No. 141, which deals with mined land reclamation. HB 141 was initiated by the Idaho Mining Association (IMA) with the purpose of updating Idaho's mining statute, to update financial assurance obligations to reflect real-cost estimates and add requirements for activities such as surface impacts from underground mines, and post closure activities. Members of IMA participated in the May 9, rulemaking meeting and have the following comments to the portions of the "strawman" proposed rule (hereinafter "Rule") which were covered at the May 9 meeting.

A. Structure of the Negotiated Rulemaking Process

Developing rules for implementing HB 141 will be complex due to the extensive changes to the Idaho mining statute. Lands has started a rulemaking process that has eleven (11) rulemaking meetings. IMA believes that providing some structure to the rulemaking process would improve the efficiency of this undertaking. As to a suggested structure, the first four meetings could be used to discuss certain topics in the rulemaking followed by Lands receiving comments specific to these topics.¹ Then, Lands could provide an updated draft rule for discussion in meetings around the state where additional input is sought. Then at the two remaining meetings in Boise, additional comments and discussion could occur. The attachment contains a suggested process.

¹ The Idaho Department of Environmental Quality utilizes a structure similar to this for complex rules.

B. General Overall Scope of the Rule

Based on our review of the Rule, it appears that Lands believes that HB 141 expanded the agency's authority to regulate water quality impacts at mine sites, IMA disagrees that such an intent can be discerned from the legislation. HB 141 simply expanded the activities at mine sites which are subject to financial assurance requirements. The actual regulation of such activities at mine sites which may impact water quality (surface or ground water) did not change. The regulation of water quality impacts from mine sites is subject to the jurisdiction of the Idaho Department of Environmental Quality (and EPA for storm water discharges from mine sites until IDEQ takes over that program in its IPDES program over the next two years.) The focus of Lands Rule should therefore be on calculating the costs of complying with IDEQ water quality regulations to establish financial assurance not on creating new water quality regulations. This is consistent with the legislature's direction in HB 141 for Lands to coordinate review of reclamation plans with IDEQ. Specific comments on this point follow in the applicable sections of the Rule. Also, it appears that various revisions to the Rule are addressing issues that Lands may deem appropriate to the Rule but are unrelated to HB 141. We believe it would be more appropriate to focus the temporary rule on those portions necessary to address HB 141 and address unrelated portions in another rulemaking.

C. Scope 001.03

Please strike the term "permitting requirements" in this section. HB 141 and the Rule do not create any permitting requirements.

D. Definitions (010)

Lands has proposed striking most definitions in response to Governor Little's Executive Order Number 2019-02, the *Red Tape Reduction Act*. It should be noted that that the Order states that in regard to existing administrative rules that agencies are to: "identify costly, ineffective, or outdated regulations." IMA opposes the deletions of these definitions. It is important from a readability and practice perspective to have these definitions contained in the rule, instead of having to go find the actual Idaho Code (statute) to read the definitions. Deleting these definitions would reduce the number of pages and the length of the regulation, but such reductions do not meet the purpose of the Red Tape Reduction Act, which is ***to remove costly, ineffective or outdated regulations***.

IMA, in a subsequent comment letter, will identify definitions that are outdated and can possibly be removed. IMA does offer the following comments to a few of the specific definitions which were added or revised in the Rule:

02. Best Management Practices (BMPs)

This definition should not have been changed. The well-established definition of BMPs set forth in Idaho Code 39-3602(3) was not changed by HB141. IDL has some role as the designated agency to identify BMPs at mine sites to address surface water impacts from nonpoint sources at mine sites. In reality the universe of nonpoint sources at mine sites that impact surface water quality is quite limited. This is because most water quality impacts from mine sites are regulated by NPDES (IPDES) permits and

stormwater permits. As noted herein nothing in HB 141 suggests that the Legislature intended Lands to have an expanded role in identifying BMPs at mine sites. Accordingly, please retain the existing definition of BMPs.

08. Material Change

Please leave in the text for cyanidation facilities. In terms of an underground mine we question why a “new opening” at underground mine should constitute a material change triggering a revised reclamation plan. For example, a new vent raise would have limited surface area and little change to an overall reclamation plan. Also, the definition should make clear that it only applies to an underground mine that has already submitted a reclamation plan to Lands for approval and is subject to this rule.

24 and 25 Water Balance and Water Management Plan

These definitions should not be changed. These requirements only apply to the cyanidation facilities by reason of IDEQ rules. The definitions should not be expanded to apply to all mine sites or to address “storm water.” Nothing in HB 141 suggests an intent to expand Lands authority to regulate water quality generally. The focus of the Rule should be on identifying financial assurance obligations necessary to comply with IDEQ water quality obligations not to expand Lands authority to regulate water quality.

E. Exploration Operations and Required Reclamation (060)

IMA notes that the changes proposed by Lands are not a part of HB 141. IMA understands that drill holes, trenches and pits, if not closed properly and timely, can present a risk to people and wildlife. IMA is collecting information as to whether the time frames drafted by Lands are workable.

F. Application Fees (068)

IMA supports a fee structure that is commiserate with the cost of the service provided by Lands. We have questions regarding how the department came to the proposed cost structure as well as how Lands views the workload associated with different services provided. For example, should a fee for a plan amendment be the same as the fee for a new application when the workload is likely to be significantly different? IMA will continue to collect information regarding fee structures in other states and how they may apply in Idaho.

G. Application Procedure and Requirements (070)

04. Reclamation Plan Requirements

Please revise as follows:

- c. A description of foreseeable site-specific water quality impacts and the BMPs that will be used to mitigate such impacts.
- d. Strike “Water Management Plan...” and replace with “Any Storm Water Pollution Prevention Plan” (SWPPP) prepared by the operator for a Clean Water Act permit, any

NEPA analysis evaluating water quality impacts, any IPDES permit application and any Point of Compliance application submitted to IDEQ.

e. Underground Mines

IMA will continue to collect information regarding the surface impacts of underground mines and provide comment later on this proposal.

f. Post Closure Activities Please revise as follows:

A description of post closure (to the extent known) that includes the following:

- i. Expected monitoring required by IDEQ
- ii. Care and maintenance procedures for facilities after mining
- iii. A description of management of mine impacted water to comply with water quality standards

H. Other Comments

Though not discussed at the May 9 meeting, IMA wants to point out to the Department that not all aspects of HB 141 have been incorporated into the Rule. Two specific examples include:

- Section 47-1512(n) related to CERCLA activities and financial assurance.
- Section 47-1518(d) and (e).

IMA will provide comments to section 120 of Rule (and any other section of the Rule covered at the May 15 meeting) after that meeting. Thank you for the opportunity to provide these comments.

Kindest Regards,



Benjamin J. Davenport

Attachment A
Potential Structure for Rulemaking

Date of Meeting	Sections to be Covered	Written Comments Due	Actions by Lands
May 9 – Boise	Scope, Definitions, Exploration, Fees, Applications	May 17	
May 15 – Boise	Financial Assurance Requirements	May 24	
May 22 - Boise	Form of Financial Assurance	May 31	
May 29 - Boise	Form of Financial Assurance and 5-Year Updates	June 7	
			Produce a 2 nd draft of rule with responses.
June 12-20 Pocatello, Challis, CDA, McCall, Boise	Review of 2 nd draft of rule.	June 21	Produce a 3 rd draft of rule with responses.
June 27 - Boise	Definitions, Fees, Applications, and Financial Assurance	July 5	
July 11 - Boise	Form of Financial Assurance and Updates	July 19	
			Produce a final draft rule with responses.