



P.O. Box 1660 • Boise, ID 83701
208.342.0031 • mineidaho.com

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

May 22, 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 15th rulemaking meeting and have the following comments to the portions of the "strawman" proposed rule (hereinafter "Rule") which were covered at the May 15th meeting. (Sections 120-122.05)

Section 120.04

We appreciate Lands striking the reference to a 10% contingency in the text in the latest draft but suggest that you strike the word "contingency" in the heading of the section. In HB 141, the 10% contingency was removed by the Idaho Legislature. IMA suggested its deletion with the idea that actual cost financial assurance required in HB 141 would address any contingency. IMA believes that leaving in the 10% contingency or any other contingency would be contrary to Legislative intent.

With regard to the list of indirect costs in Section 120.04, IMA generally believes this is a reasonable list (with one exception) and we encourage Lands to consult the Standard Reclamation Cost Estimator (SRCE) model used by the state of Nevada in defining and calculating indirect costs. IMA does take exception to 120.04.g related to providing financial assurance for reengineering costs. We believe that a mine should not have to provide financial assurance based on the speculation that at some point in the future Lands might have to reengineer a reclamation plan. Lands could only cite one instance where this occurred over the past 25 years. IMA believes that a thorough review of the

reclamation plan upfront will minimize the need to require reengineering of a reclamation plan.

Section 120.06

Please change the word “may” to “shall” in the last sentence. Completion of reclamation on acreage must necessarily result in a reduced financial assurance amount.

Section 120.09

Please track the language in HB 141 (47-1512(h)) regarding partial release of financial assurance for post-closure activities or reclamation that is substantially completed. Similar to the comment in Section 120.06, the financial assurance “shall” be released upon the Board determining that requirements in the plan have been substantially met.

Section 121

IMA incorporates its comments to Section 120 to cyanidation facilities regarding contingencies and reengineering costs.

Section 122.05.b

IMA recommends that Section 122.05.b be reworded as follows:

“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.”

This language tracks the required qualifications for a trustee in the state of Idaho hazardous and solid waste rules governing financial assurance and trust funds. Nothing in HB 141 suggests the trustee’s qualifications should be limited further.

We note that HB141 (Idaho Code § 47-1512(e)) recognized that a trust could be funded on a specified schedule of payments. Currently, the Rule does not address this concept. IMA believes this should be addressed in the Rule to provide certainty to mine operators going forward. One way to structure a schedule of payments would be to require annual payments over the life of a mine (or the post-closure period) that is equal to the estimated cost of reclamation (or post-closure). The formula being $\frac{RE-CV}{Y}$, where RE is the current estimated reclamation cost and CV is the current value of the trust fund and the Y is the number of years of the life of the mine (or post-closure period). Such a pay-in structure is consistent with the pay-in schedule for trusts in the RCRA/solid waste rules currently in place under Idaho law. IMA would be open to further discussions with Lands around a pay-in period for a trust fund.

Section 122.05.c

IMA would suggest adding CDs and money market funds to the list of investments in which a trustee may invest. Also, rather than set forth a percentage range of investment in which a trustee can invest, perhaps it would be more desirable to set a goal of an annual rate of return the trust should achieve (e.g., 4%-5%) and allow the

trustee to utilize its expertise to determine the best way to achieve that goal. The trust fund would be periodically reviewed to determine whether the trust was achieving the performance goal and could be adjusted accordingly.

IMA will provide comments to the corporate guarantee provisions of the Rule after that topic is discussed further at the May 22 meeting. Further, there are issues that IMA raised in our 5/15/19 comment letter that are unresolved in the most recent draft. We believe further discussion on these matters are warranted. Thank you for the opportunity to provide these comments.

Kindest Regards,

A handwritten signature in blue ink, appearing to read "B. J. Davenport", with a large, sweeping flourish at the end.

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.