



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
IDAHO OPERATIONS OFFICE
950 West Bannock, Suite 900
Boise, Idaho 83702

Eric Wilson
Bureau Chief, Resource Protection and Assistance
Idaho Department of Lands
300 N. 6th Street, Suite 103
Boise, Idaho 83702

Re: Rulemaking for IDAPA 20.03.02; Rules Governing Exploration, Surface Mining, and Closure of Cyanidation Facilities; Docket No. 20-0302-1901; EPA comment submittal #1

Dear Mr. Wilson:

The EPA applauds the State of Idaho for taking steps to strengthen its reclamation and financial assurance requirements for mining projects. We appreciate the opportunity to provide feedback through the negotiated rulemaking process.

We reviewed the Idaho Legislation H 141 Statement of Purpose, which specifies that changes include addressing the surface impacts of underground mines, updating financial assurance methods, and requiring financial assurance for reclamation and long-term post closure management activities. We support these changes and will provide specific feedback on proposed changes to the regulatory text in future submittals. Our main comment at this point is to encourage Idaho Department of Lands (IDL) to review and document current regulatory practices for mining reclamation and financial assurance to provide a supporting basis for the proposed changes as described below.

The purpose of the proposed changes to Idaho's reclamation and financial assurance requirements is to "more accurately reflect current industry and regulatory practices" (HB 141 Statement of Purpose). To determine the current industry and regulatory practices, we recommend that IDL undertake a review of U.S. states reclamation and financial assurance practices and to also review practices of the U.S. Bureau of Land Management (BLM) and the US Forest Service. This review could be focused on select states where most mining occurs and focused on areas of reclamation and financial assurance that IDL would be proposing to change. We recommend that the review be documented or summarized in a report that IDL and participants in the negotiated rulemaking process can refer to as the rule is being developed. Such documentation will provide evidence that the proposed changes meet the H 141 Statement of Purpose to accurately reflect current industry and regulatory practices. Further, we believe this documentation will lead to a more defensible rule.

We recognize that the rulemaking timeline is to present a temporary rule to the Land Board by July 16, 2019 and submit a proposed final rule to OAR by August 2, 2019. The EPA appreciates the timeline and the potential limitations of conducting and documenting a review of current reclamation and financial assurance practices within these timeframes. However, we think it is essential and beneficial for IDL to have a strong supporting record for the rule to show that it meets the intent of reflecting current regulatory practice.

We would be happy to discuss this comment with you further. And, again, we appreciate the opportunity to provide feedback. Please contact me at mcgrath.patricia@epa.gov or (206) 553-6113 should you have questions or wish to discuss this comment.

Sincerely,

A handwritten signature in dark ink, appearing to read "Patty McGrath", with a small "for" written below it.

Patty McGrath
Mining Advisor