



IDAHO
CONSERVATION
LEAGUE

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June 21, 2019

Idaho Department of Lands
Attn: Eric Wilson - Rulemaking
300 N. 6th St., Suite 103
Boise, ID 83702

Submitted via email: rulemaking@idl.idaho.gov

**RE: Idaho Conservation League's comments on Draft #1 Temporary Rules
Governing Exploration, Surface Mining, and Closure of Cyanidation Facilities –
IDAPA 20.03.02; Docket No. 20-0302-1901**

Dear Mr. Wilson:

Thank you for the opportunity to provide comments on the first draft of the Idaho Department of Land's (IDL or "the Department") Temporary Rules Governing Exploration, Surface Mining, and Closure of Cyanidation Facilities – IDAPA 20.03.02.

Since 1973, the Idaho Conservation League has been Idaho's leading voice for clean water, clean air and wilderness—values that are the foundation for Idaho's extraordinary quality of life. The Idaho Conservation League works to protect these values through public education, outreach, advocacy and policy development. As Idaho's largest state-based conservation organization, we represent over 30,000 supporters, many of whom are interested in ensuring that mines in Idaho are adequately regulated so as to ensure the protection of Idaho's water quality, public health, and aquatic species.

Our detailed comments follow this letter. Please contact me at 208-345-6933 ext. 23 or awalkins@idahoconservation.org if you have any questions regarding our comments or if we can provide you with any additional information on this matter.

Sincerely,

Austin Walkins
Senior Conservation Associate

Jonathan Oppenheimer
Government Relations Director

*RE: Idaho Conservation League's comments on Draft #1 Temporary Rules Governing
Exploration, Surface Mining, and Closure of Cyanidation Facilities – IDAPA 20.03.02;
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Inclusion of Director Discretion for Corporate Guarantees

The acceptance of all types of financial assurances should be at the discretion of the Director, similar to the language found in 122.04.b. In particular, we urge inclusion of a clause that provides discretionary authority to the IDL Director to accept or reject a corporate guarantee. While the financial fitness test included at 122.06 (c) provides for consideration of a variety of factors, there could be other considerations, liabilities, pending legal action or other valid reasons for rejection of a corporate guarantee. Ultimately, the Director must provide sufficient rationale for his or her decision, and based on the relatively high risk that the State of Idaho could incur via the acceptance of a corporate guarantee, a commensurate degree of discretion is warranted.

90% of Assets for Corporate Guarantees in U.S.

We urge the department to require that 90% of assets for a company seeking a corporate guarantee be located in the U.S. This is consistent with the requirements found in 40 CFR 264.143 (f). If the Department ultimately chooses to incorporate requirements that are less stringent than federal requirements we request that the Department provide an explanation regarding their decision.

As stated in previous comments, failure to require this provision could result in costly and time-consuming pursuits of financial assurances in international courts. In addition to the resource issues, the ultimate outcome of these pursuits is also highly unknown given the lack of clarity on how an Idaho law would be enforced in an international court.

Water Management Plans

The requirements in subsection 070.04.e.ii should have to be vetted by a Professional Engineer or someone with an equivalent level of expertise and/or training. Someone could easily describe efforts to secure mine openings; however, unless this description is validated by a certified party there's no assurance that it will be effective.