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June 28, 2019

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

**Re: Rulemaking for IDAPA 20.03.02
Docket No. 20-0302-1901
Draft Temp Rule dated June 26, 2019**

Dear Mr. Wilson:

The Idaho Mining Association (IMA) is providing the following comments to the subject draft Rule.

A. Temporary Rule Comments.

IMA's prior comments as they relate to the Idaho Department of Land's (IDL) role with respect to water quality need further discussion during the rule-making process and therefore should not be addressed in the temporary rule. Duplicative and potentially burdensome requirements related to water quality may be imposed by the subject draft rule.

House Bill 141 (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. The regulation and permitting of mine operations to protect water quality remains with the Idaho Department of Environmental Quality (IDEQ). We appreciate that IDL needs to obtain information related to water management in reviewing a reclamation plan. However, the draft Rule is written in a way that HB 141 never intended by expanding IDL's authority to regulate water quality. No such expansion was intended or occurred by HB 141. This problem begins with IDL's proposed expansion of definitions related to water quality in Section 010 and carries forward throughout various sections of the draft Rule identified below.

As previously pointed out, the terms "water management plan" and "water balance" were terms specific to cyanidation facilities (not any other mines) to ensure that cyanide containing materials were contained and segregated from other materials at such mine sites. The focus on segregating and containing cyanide materials was dictated by the definition of cyanidation facilities adopted by the Idaho Legislature in 2005, in Senate Bill 167 (SB 167) (Idaho Code §§ 39-103(5) and 47-

1503(3)). There was no intent in SB 167 and certainly not in HB 141 to require that all mines be addressed like cyanidation facilities. Nevertheless, IDL's current draft Rule suggests all mine operations are now addressed like cyanidation facilities. The concepts of "water management plan" and "water balance" should not apply to all mining operations in the manner suggested by the subject rule.

Similarly, IDL's expansion of the definition of Best Management Practices (BMPs) is not warranted and not supported by HB 141. The definition of "BMP" should remain the same which is identical to the definition in Idaho Code § 39-3602(3) and Idaho's Water Quality Standards, IDAPA 58.01.02.010.09. In fact, in light of the broad coverage of stormwater runoff from mines under Idaho's IPDES program, there is very little nonpoint source impacts from mines that are actually regulated by IDL.

Consistent with our water quality comments above, please make the following changes:

Section 069.05.a. Do not change this subsection. IDL's role to address nonpoint source impacts from mining operations did not change in HB 141. The additional text related to "proposed management activities to comply with water quality requirements" is acceptable.

Section 070.04. IMA believes Section 070.04 c, d and f need to be changed in the temporary rule.

As a place holder in the temporary rule, pending further negotiations, please consider striking IDL's proposed language in Section 070.04 c, d and f by revising 070.04 as follows:

c. A description of foreseeable water quality impacts during mining operations and proposed water management activities to comply with water quality requirements.

f. A description of post closure activities.

IMA's proposed language mirrors the language in HB 141 (Idaho Code §§ 47-1506(a)(1) vii and viii. Therefore, IDL should not have any objection including this proposed language in the temporary rule pending further negotiations.

Section 140.03. Strike this subsection. 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.

IMA requests that IDL make these changes to the definition sections and the related water quality sections noted above in the temporary rule. IDL and IDEQ roles related to water quality and water management need further discussion during the anticipated negotiated rule-making process.

B. Other Comments to the Subject Rule.

Section 001.05. 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.

Section 010.07. Do not change the definition of “land application” to include all mine operations. See comments above. Also, the term in the draft rule is only used with respect to cyanidation facilities.

Section 010.08.b. “Material Change.” A new opening to an underground mine should not automatically constitute a material change unless it would otherwise be considered a material change under the current definition (e.g., increases reclamation costs by greater than 15%).

Section 060.02. Please clarify when “exploration” would be considered mining in this subsection or in the Definition subsection.

Section 070.04.e.i. 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.

Section 120.01. The 18-month deadline between reclamation plan approval and commencement of mining is not realistic, since often times mine operations can be tied up in third party litigation and other causes for delay. IMA suggests that IDL further refine this subsection to define “reasonable cause” to allow an extension of time to commence operation under an approved reclamation plan.

Section 120.04. Indirect Costs. Please strike subsections g and h for the reasons stated in prior IMA comment letters.

Section 120.08. Financial Assurance Reduction. Please strike “initial” in this subsection as an operator should be able to request reduction in financial assurance during the course of reclamation.

Section 120.09. This subsection needs to be revised to be consistent with HB 141 (Idaho Code § 47-1512(h)). It needs to make clear that a reduction or release of financial assurance applies to substantial completion to all or portions of both a reclamation plan and post closure and that release of the financial assurance by IDL is mandatory (upon a finding by IDL of substantial completion).

Section 121.04. Cyanidation Facility, Indirect Costs. Strike subsections **g** and **h** for the reasons previously stated.

Section 122.05.

- a.** We are not clear why this requirement is included. Please justify.
- d.** We believe bonds held by a trust can be less than AAA or AA as the rate of return on such bonds can be higher. This type of decision should be left to the trustee and not IDL Rules. We suggest striking this subsection.
- e.** Payments into the trust. As previously pointed out by IMA, the Idaho Legislature made clear in HB 141 that a schedule of payments into a trust fund is appropriate. Such a schedule of payments should be over the life of the active mining operation and the post closure period, with annual payments to the trust fund, divided by the number of years of the active mining operation or post closure period. This phased payment schedule into a trust is consistent with current IDEQ solid and hazardous waste rules. Please revise accordingly.
- f.** Disbursements from the trust. It is not clear what is intended in this subsection. If the partial release of funds by the trust is due to substantial completion of portions of either a reclamation plan or post closure, it should be governed by Idaho Code § 47-1512(h).

Section 122.06. Corporate Guarantees.

- c.** Please strike “licensed in Idaho” for audited financial statements. A CPA need not be licensed in Idaho to provide adequate information to IDL.
- e.** We are not clear why this provision is necessary. Please provide justification for it.

Thank you for the opportunity to comment on the subject draft Rule and we look forward to further negotiation of a proposed rule.

Sincerely,

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

Benjamin J. Davenport