

From: [jtrygh.](#)
To: [Rule Making](#)
Subject: 20.03.02 Rulemakeing
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Attachments: [IDL comment.doc](#)

Attached please find my comments for the 20.03.02 rulemaking. Thanks.

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Idaho Department of Lands
Attn: Eric Wilson

As a former geologist, minerals administrator, and reclamation specialist for the Payette National Forest, I would like to offer my input to the negotiated rulemaking process for IDAPA 20.03.02. I have a copy of the second draft of the temporary rule dated June 26, 2019 and have derived my comments from that document and have referenced the numbering system in that draft. Without further ado...

p. 3 001.05.b.iv I would strike this section. It seems like you may be giving existing mines an unwarranted pass on reclamation requirements. I know of at least a couple underground mines that are currently underbonded and I suspect there are plenty others out there. Why not have a little extra regulatory incentive to bring them into compliance? If you keep this section please elaborate a bit on the 50% criterion. Does this mean that once they expanded 50% greater than the existing surface area as of 7/1/19 they would no longer be exempt from these rules? Is there any time criterion involved? Can an operator expand 49% in one season without consequence? It doesn't take much of a surface impact from an underground mine to produce significant water quality discharge issues. Just cataloging the existing footprints of active mines may be a bit of effort.

p. 13 070.04.f.i Not sure if this is the place to specify it, but close the loop on the water quality monitoring. Need a provision somewhere that specifies (as much as possible) contingency actions should water quality parameters exceed state standards. And of course there's the issue of natural variation and what constitutes a trend vs. a transitory spike. A whole lot of science and statistics to be argued over here. Once contamination occurs, solutions can be very protracted (especially with groundwater). There needs to be significant motivation to act quickly.

p. 17 080.02.a In the interest of more public transparency I would change the "may" in the line "The director may provide public notice on receipt of a reclamation plan or permanent closure plan." to a "shall".

p. 20 090.03 Perhaps try to better define what sort of changes justify an adjustment vs. an amendment. Are there any quantifiable thresholds that could tighten this up beyond the term "smaller"?

p. 21 110.01 Again, in the interest of public transparency I would change the "may" in the line "The director may call for a hearing following his preliminary review of an application for a new operation or a supplemental application of an existing operation when one (1) or more of the following circumstances arises:" to a "shall".

p. 25 120.09.a This section sounds like an invitation to the operator to haggle. If the bond estimators are doing their job well with thorough documentation there really shouldn't be much argument over costs. If you want to double check the bond costs, I suppose you could have an impartial third party conduct a review.

p. 25 120.10 The word "substantially" is fairly vague in this context. Can this language be tightened up some? Perhaps 95% of costs accounted for? But then again why allow less than full compliance? Strike it.

p. 31 122.04.b The provision to allow reclaimed lands or other property within the permit boundary to be used as security seems like a bad idea. If the operator defaults then the State is holding a parcel adjacent to an unreclaimed mine site. Doubt that there would be many buyers clamoring for such property.

p. 31 122.06.a Consider lowering the allowable percentage of corporate guarantees to 20%. This is a notoriously risky financial assurance vehicle as many will attest. Does the State really feel lucky? As a fiscally conservative taxpayer, I don't.

p. 32 122.06.d.i I would give yourself a little more padding than "equal or greater than". How about 150% of.

p. 32 122.06.d.iii Drop the part about six times foreign assets. Recovery of foreign assets rarely ends well.

p. 34 140.02 Define "more appropriate". More elaboration perhaps.

p. 35 140.03 Need to also mention that discharge to groundwater (via infiltration or injection) needs to meet water quality standards under IDAPA 58.01.11.

p. 38 140.10.c.i Need to address proper disposal/treatment of decant water.

p. 38 140.10.c.iii Does anyone really breach a tailings dam and route a channel through it? This seems like an exceptionally bad idea. Perhaps I'm not thinking of an instance when this choice would be applicable.

p. 39 140.12 Since there's a lot of reveg detail here, you might also specify some soil parameters. I used to use microbial respiration rates as a quantifiable measure of soil health. Rebuild the soil and the veg will follow.

p. 41 155.03.a As noted, the frequency of inspections should be greater than 5 years in many cases. Things happen fast on site, I would suggest a 3 year minimum frequency.

Happy Rulemaking!

Regards,

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