

Docket No. 20-0303-1901

20.03.03 – RULES GOVERNING ADMINISTRATION OF THE RECLAMATION FUND

Draft 2 Revisions have been included in green

000. LEGAL AUTHORITY.

These rules are promulgated by the Idaho State Board of Land Commissioners pursuant to under Sections 58-104(3) and (6), Idaho Code, and Title 47, Chapter 18, Idaho Code. The Board has delegated to the director of the Idaho Department of Lands the duties and powers under Title 47, Chapter 18, Idaho Code and these rules; provided except that the Board shall retain responsibility for administrative review. (3-16-04)()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 20.03.03, “Rules Governing Administration of the Reclamation Fund,” IDAPA 20, Title 03, Chapter 03. (3-16-04)

02. Scope. These rules constitute the Idaho Department’s of Lands’ administrative procedures and participation criteria for the implementation of a Reclamation Fund, which is to be used as an alternative form of financial assurance for certain mining operations mines in Idaho. These rules shall be construed in a manner consistent with the duties and responsibilities of the Board and of operators, permit holders, or lessees as set forth in Title 47, Chapters 7, Idaho Code, “Mineral Rights in State Lands,” Title 47, Chapter 13, Idaho Code “Dredge Mining,” Title 47, Chapter 15, Idaho Code, Mined Land Reclamation,” and Title 47, Chapter 18, Idaho Code, “Financial Assurance,” and IDAPA 20.03.01, “Dredge and Placer Mining Operations in Idaho,” IDAPA 20.03.02, “Rules Governing Mined Land Reclamation Exploration and Surface Mining in Idaho,” and IDAPA 20.03.05, “Riverbed Mineral Leasing in Idaho.” (3-16-04)()

002. WRITTEN INTERPRETATIONS.

The Board does not rely on any written interpretive statements interpretations concerning these rules. (3-16-04)()

003. ADMINISTRATIVE APPEALS.

01. Procedure for Appeals. Any operator, lessee, permit or plan holder aggrieved by any final decision or order of the Board shall be entitled to judicial review in accordance with the provisions and standards set forth in Title 67, Chapter 52, Idaho Code, and the Administrative Procedures Act. (3-16-04)

02. Effective Date of a Final Order. When the director or the Board finds that justice so requires, it may postpone the effective date of a final order pending judicial review. (3-16-04)

03. Filing a Civil Action in District Court for Noncompliance. Notwithstanding any other provisions of these rules concerning administrative or judicial proceedings, whenever the Board determines that a permittee or lessee has not complied with the provisions of the Dredge Mining Act, the Surface Mining Act, or a mineral lease, the Board may file a civil action in the district court for the county wherein the violation or some part occurred, or in the district court for the county where the defendant resides, in accordance with said acts or mineral lease. The Board may request the court to issue an appropriate order to remedy any alleged violation. (3-16-04)

Any person aggrieved by a final agency action or a party aggrieved by a final order of the board arising from its administration of the reclamation fund act is entitled to judicial review pursuant to the provisions of Title 67, Chapter 52, Idaho Code, “Administrative Procedure Act,” and IDAPA 20.01.01, “Rules of Practice and Procedure Before the State Board of Land Commissioners.” ()

004. INCORPORATION BY REFERENCE.

01. Incorporated Documents. The following documents are expressly incorporated herein by

reference as part of these rules to the extent that said rules or mineral lease apply to a subject mining operation. (3-16-04)

~~a. IDAPA 20.03.01, "Dredge and Placer Mining Operations in Idaho." (3-16-04)~~

~~b. IDAPA 20.03.02, "Rules Governing Exploration and Surface Mining in Idaho." (3-16-04)~~

~~c. Title 47, Chapter 7, Idaho Code, Mineral Rights in State Lands. (3-16-04)~~

~~02. Availability of Incorporated Documents. Unofficial copies of the incorporated documents may be obtained from any Idaho Department of Lands Office or on line at <http://adm.idaho.gov/adminrules/>. Official copies of the incorporated administrative rules may be obtained from the Office of the Administrative Rules Coordinator located at 650 W. State Street, Room 100, Boise, Idaho 83720.~~

~~There are no documents incorporated by reference into this rule. (3-16-04)()~~
(3-16-04)

005. OFFICE – OFFICE HOURS – MAILING ADDRESS AND STREET ADDRESS.

~~01. Office. The principal place of business of the Idaho Department of Lands is the Director's Office at 300 North 6th Street, Suite 103, Boise, Idaho 83720 and is open from 8 a.m. to 5 p.m., Monday through Friday, except legal holidays. (3-16-04)~~

~~02. Address. The mailing address is Idaho Department of Lands, PO Box 83720, Boise, Idaho 83720-0050. (3-16-04)~~

~~03. Telephone and Fax. The telephone of the office is (208) 334-0200; fax (208) 334-2399. (3-16-04)~~
~~The principal place of business of the department is in Boise, Idaho. The office is located at: 300 North 6th Street, Suite 103, Boise, Idaho and is open from 8 a.m. to 5 p.m., Monday through Friday, except legal holidays. The mailing address is: Idaho Department of Lands, P.O. Box 83720, Boise, Idaho 83720-0050. The telephone of the office is (208) 334-0200 and the fax number is (208) 334-3698. The department's web address is located at www.idl.idaho.gov. (3-16-04)()~~

006. PUBLIC RECORDS ACT COMPLIANCE.

~~01. Administrative Procedures Act. The rules contained herein have been promulgated in accordance with the Administrative Procedures Act, Title 67, Chapter 52, Idaho Code and are a public record. (3-16-04)~~

~~02. Confidentiality of Information. The following records are exempt from disclosure pursuant to Section 74-107(2), Idaho Code, shall not be disclosed by the Board, director, or department employees, to any person other than the Board, director and employees of the Department without the written permission of the operator, permit holder or lessee. (3-16-04)~~

~~a. Notice of exploration as required pursuant to Section 47-1314(b), Idaho Code, and Section 020, IDAPA 20.03.01, "Dredge and Placer Mining Operations in Idaho." (3-16-04)~~

~~b. Notices of exploration as required pursuant to Section 47-1506(e), Idaho Code, and Section 060, IDAPA 20.03.02, "Rules Governing Exploration and Surface Mining in Idaho." (3-16-04)~~

~~c. Production records. (3-16-04)~~

~~These rules contained herein have been promulgated in accordance with the Administrative Procedures Act, Title 67, Chapter 52, Idaho Code and are a public record are subject to and in compliance with Title 74, Chapter 1, Idaho Code, the "Public Records Act.", Title 74, Chapter 1, Idaho Code Unless exempt from disclosure under said Act, any document filed with the department under these rules is a public record. (3-16-04)()~~

007. -- 009. (RESERVED)

010. DEFINITIONS.

Except as provided in these rules, the board adopts the definitions set forth in the mineral leasing act, the dredge mining act, and the mined land reclamation act. As used in these rules: ()

01. Board. The Idaho State Board of Land Commissioners or ~~any department, commission, or agency that may lawfully succeed to the duties and powers of such Board or its authorized representative.~~ (3-16-04)()

~~**02. Definitions Incorporated.** Except as provided in these rules, the definitions set forth in IDAPA 20.03.01, "Dredge and Placer Mining Operations in Idaho," and in IDAPA 20.03.02, "Rules Governing Exploration and Surface Mining in Idaho," to the extent not provided in these rules, shall govern actions pursuant to Title 47, Chapter 18, Idaho Code, and these rules.~~ (3-16-04)

03. Department. The Idaho Department of Lands. (3-16-04)

04. Disturbed Acres; ~~or~~ Affected Lands. Any ~~L~~land, natural watercourses, or existing stockpiles or waste piles affected by placer or dredge mining, remining, exploration, stockpiling of ore, waste from placer or dredge mining, or construction of roads, settling ponds, structures, or facilities appurtenant to a placer or dredge ~~mining operations~~ mine. The land area included in overburden disposal areas, mined areas, mineral stockpiles, roads, tailings ponds, and other areas disturbed at a ~~surface mining site~~ mine. The land area disturbed by motorized exploration of state land under a mineral lease. (3-16-04)()

05. Dredge Mining Act. Title 47, Chapter 13, Idaho Code, and IDAPA 20.03.01, "Dredge and Placer Mining Operations in Idaho." (3-16-04)

~~**06. Financial Assurance.** Performance bonding submitted to ensure reclamation of disturbed acres or affected land or ensure payments under a mineral lease.~~ (3-16-04)

07. Mine; ~~or~~ Mine Panel. ~~The~~ All areas designated by the operator ~~or permittee as a panel of a surface mine~~ on the map ~~or plan~~ submitted pursuant to Section 47-703A, Idaho Code, Section 47-1506, Idaho Code, or as an identifiable portion of a placer or dredge mine on the map submitted ~~pursuant to~~ under Section 47-1317, Idaho Code. (3-16-04)()

08. Mineral Lease. Lease executed by the board and the mineral lessee pursuant to the mineral leasing act, Title 47, Chapter 7, Idaho Code. (3-16-04)()

09. Mineral Lessee. The lessee ~~of record~~ of a ~~State of Idaho M~~ mineral Llease. (3-16-04)()

10. Mineral Leasing Act. Title 47, Chapter 7, Idaho Code. (3-16-04)

11. Motorized Exploration. Exploration which may appreciably disturb or damage the land or resources thereon. Motorized exploration includes, but is not limited to, drilling, trenching, dredging, or other techniques which employ the use of earth moving equipment, seismic operations using explosives, and, ~~under the Mineral Leasing Act,~~ includes sampling with a suction dredge having an intake diameter greater than two (2) inches when operated in a perennial stream. When operated in an intermittent stream, suction dredges shall be considered motorized exploration regardless of intake size. (3-16-04)()

12. Operator. Any person or ~~persons, any partnership, limited partnership or corporation, or any association of persons, either natural or artificial, including, but not limited to, every public or governmental agency engaged in surface mining, exploration or dredge and placer mining operations, whether individually, jointly, or through subsidiaries, agents, employees, or contractors and shall mean every government agency owning or controlling the use of any surface mine or dredge and placer mine where the extraction of minerals is to be used by or for the benefit of such agency. For the purpose of these rules, an operator shall include a party holding a permit or an approved surface mining reclamation plan.~~ entity authorized to conduct business in Idaho, partnership, joint venture, or public or governmental agency required to have any reclamation plan under the mined land reclamation act or the

mineral leasing act, or of a permit under the dredge mining act, whether individually or jointly through subsidiaries, agents, employees, or contractors. (3-16-04)()

13. **Permit.** Dredge ~~and or~~ Placer Mining Permit issued pursuant to the dredge mining act Title 47, Chapter 13, Idaho Code. (3-16-04)()

14. **Reclamation Fund.** The interest-bearing dedicated fund authorized pursuant to ~~Title 47, Chapter 18, Idaho Code~~ the reclamation fund act. ~~The Reclamation Fund shall consist of fees paid by participating operators, permittees or lessees, interest and cost recoveries initiated by the Board pursuant to Section 47-1804, Idaho Code.~~ (3-16-04)()

15. **Reclamation Fund Act.** Title 47, Chapter 18, Idaho Code, ~~and IDAPA 20.03.03, "Rules Governing Administration of the Reclamation Fund."~~ (3-16-04)()

16. ~~Surface Mining Act~~ **Mined Land Reclamation Act.** Title 47, Chapter 15, Idaho Code, and IDAPA 20.03.02, "Rules Governing ~~Exploration and Surface Mining in Idaho~~ mMined LLand rReclamation." (3-16-04)()

17. **Surface Mining Reclamation Plan.** ~~Any~~ Any Reclamation plan approved ~~by the department~~ pursuant to ~~Title 47, Chapter 15, Idaho Code~~ the mined land reclamation act. (3-16-04)()

18. ~~Traditional Performance Bond~~ **Financial Assurance.** Cash, corporate surety bond, collateral bond, or letter of credit as described in the ~~Dredge Mining Act, the Surface Mining Act and the Mineral Leasing Act~~, or a mineral lease. Financial assurance as defined in the mined land reclamation act. (3-16-04)()

19. **Actual Allowable Disturbance.** The area of disturbed acres or affected land as set by the board to allow participation in the reclamation fund. ()

20. **Actual Allowable Cost.** The allowable total reclamation cost as set by the board to allow participation in the reclamation fund. ()

011. -- 015. (RESERVED)

016. REQUIRED PARTICIPANTS.

~~Any~~ Operators of mineral leases, surface mines, and placer mines, with the exception of the ~~operations~~ mines and operators listed in Section 017 of these rules, shall be required to provide alternative financial assurance through the Reclamation Fund to assure the reclamation of disturbed acres or affected lands. ~~Alternative~~ Financial assurance pursuant to the Reclamation Fund Act ~~and this rule shall be~~ is in lieu of ~~traditional performance bonds~~ other types of financial assurance as set forth in the Surface Mining mined land reclamation Act, the mineral leasing act, or the Dredge Mining Act, or a mineral lease. (3-16-04)()

017. INELIGIBLE OPERATION MINES OR OPERATORS.

The following types of ~~operations~~ mines and operators are not allowed to participate in the Reclamation Fund and ~~may not provide alternative financial assurance through the Reclamation Fund~~ must file proof of other acceptable financial assurance as required by the department. (3-16-04)()

01. ~~Forty~~ **Disturbed Acres Limit.** A ~~surface or placer~~ mine or mineral lease with ~~greater than forty~~ (40) acres of un-reclaimed disturbed acres or affected lands in excess of the actual allowable disturbance, may not provide alternative financial assurance through the Reclamation Fund. Un-reclaimed disturbance is that which does not meet the final ~~traditional performance bond~~ financial assurance release criteria in the Dredge Mining Act, the Surface Mining Act or a mineral lease. (3-16-04)()

02. ~~One Hundred Thousand Dollar~~ **Reclamation Cost Limit.** Operators ~~of mines~~ with an estimated reclamation cost in excess of ~~one hundred thousand dollars (\$100,000)~~ the actual allowable reclamation cost,

regardless of ~~surface~~ the disturbed acreages. (3-16-04)()

03. Phosphate Mines. Operators or mineral lessees of phosphate mines ~~or lease holders of phosphate leases.~~ (3-16-04)()

04. Hardrock Mines. Operators or mineral lessees of hardrock mines such as gold, silver, molybdenum, copper, lead, zinc, cobalt, and other precious metal mines. (3-16-04)()

05. Potential Heavy Metal Releases. Operators of mines with a reasonable potential to release heavy metals or other substances harmful to human health or the environment, but not including substances such as fuels and other materials commonly used in excavation or construction. (3-16-04)()

06. Oil and Gas Conservation. Oil and gas exploration and development ~~authorized~~ under Title 47, Chapter 3, Idaho Code. (3-16-04)()

07. Oil and Gas Leasing. Oil and gas leases and associated exploration and development ~~authorized~~ under Title 47, Chapter 8, Idaho Code. (3-16-04)()

08. Geothermal. Operators or mineral lessees of Geothermal leases wells and development ~~authorized~~ under Title 47, Chapter 16, Idaho Code. (3-16-04)()

09. Off Lease Exploration. Motorized exploration on state lands that are not under a mineral lease or exploration location. (3-16-04)()

10. Violators. ~~Operations in Mines~~ or operators, ~~permittees or lessees~~ in violation of the reclamation fund act, the ~~Dredge Mining Act~~, Surface Mining mined land reclamation Act, ~~Mineral Leasing Act~~, or a mineral lease. (3-16-04)()

11. Reclamation Fund Forfeitures. Operators, permittees or lessees who have not reimbursed the ~~Reclamation Fund~~ for a forfeiture from the ~~Reclamation Fund~~ due to their violations of the reclamation fund act, the ~~Dredge Mining Act~~, Surface Mining the mined land reclamation Act, the ~~Mineral Leasing Act~~, or a mineral lease. (3-16-04)()

12. Other Forfeitures. An operator who has forfeited any ~~traditional performance bond~~ financial assurance. (3-16-04)()

13. ~~Operators Providing Acceptable Financial Assurance.~~ An operator who provides proof of financial assurance accepted by the department that is greater than or equal to the minimum dollar per acre for each acre of disturbance-affected land at a mine. ()

018. ACREAGE AND RECLAMATION COST LIMITATIONS.

~~No operator shall be allowed to provide bonding through the Reclamation Fund if said operator has more than forty (40) acres of cumulative surface disturbance at more than one (1) mine site. An operator who has multiple plans and permits with a total disturbance in excess of forty (40) acres may participate in the Reclamation Fund with one (1) or more sites that contain less than forty (40) acres of total disturbance. These operators may also choose to not participate in the Reclamation Fund at all. A plan or permit that does not provide alternative financial assistance through the Reclamation Fund must be bonded with a traditional performance bond.~~ (3-16-04)

01. The board will determine the actual allowable disturbance, actual allowable reclamation cost, and the minimum dollar per acre of disturbance in order to provide financial assurance to opt out of participation in the reclamation fund. ()

02. The maximum acreage of affected land and maximum allowable reclamation costs in this chapter

are maximums. Actual allowable acreage of affected lands and reclamation costs shall be established by board policy. ()

03. The maximum allowable disturbance shall be eighty (80) acres, the maximum allowable reclamation cost shall be four hundred and forty thousand (\$440,000) dollars. ()

04. An operator who has multiple mining reclamation plans or permits, which have a total disturbance in excess of the actual allowable disturbance, or with total reclamation costs in excess of the actual allowable reclamation cost, may participate in the reclamation fund with one (1) or more sites that together contain less than both of the board-determined actual allowable limits. ()

019. OPTIONAL PARTICIPATION.

Operators who have one (1) or more ~~mining operations mines~~ or ~~mineral~~ leases that are ineligible to participate in the ~~R~~reclamation ~~F~~fund as set forth in Section 017 or 018 of these rules may choose to not participate in the ~~R~~reclamation ~~F~~fund with respect to all other ~~eligible mining operations mines~~ or ~~mineral~~ leases in their name. An operator who does not participate in the ~~R~~reclamation ~~F~~fund must secure ~~their all operation mines~~ with ~~a traditional performance bond~~ other types of financial assurance approved by the department. (3-16-04)()

020. FEDERAL AGENCY NON-ACCEPTANCE OF RECLAMATION FUND.

If a federal agency will not accept an operator's participation in the ~~R~~reclamation ~~F~~fund as proof of reclamation security, the operator will be required to provide ~~a traditional performance bond~~ the department with proof of other types of financial assurance acceptable to the department. (3-16-04)()

021. -- 025. (RESERVED)

026. PAYMENT.

01. **Board Approved Payment Schedule.** The ~~B~~board shall adopt a payment schedule ~~which will~~ to ~~be~~ used to determine the annual ~~R~~reclamation ~~F~~fund payment for each ~~mineral lease, reclamation plan, placer permit or temporary permit required to participate~~ operator participating in the ~~R~~reclamation ~~F~~fund. Any changes to the payment ~~structure~~ schedule must ~~will~~ be reviewed and approved by the ~~B~~board. ~~Participating operators shall pay all required payments annually.~~ (3-16-04)()

02. **Acreage Calculation.** The annual payment for each participant in the ~~R~~reclamation ~~F~~fund ~~shall will~~ be established based upon the number of ~~acres of~~ disturbed ~~acres or affected land~~ at each ~~mining operation mine~~. The acres used to calculate the annual payment ~~shall will~~ include the ~~acres of total~~ currently disturbed ~~acres and of~~ affected lands and the acres planned to be disturbed or affected during the next twelve (12) months ~~as required by the Surface Mining Act and the Dredge Mining Act, or as may be required by a mineral lease~~. The ~~acres of disturbed or affected land at the mining operation total acreage calculation~~ shall not be rounded when determining annual payments. (3-16-04)()

03. **Annual Payments Non-Refundable.** Payments to the ~~R~~reclamation ~~F~~fund are non-refundable. Payments will be billed annually and ~~are subject to late penalties, if not timely paid, will accrue late fees and interest~~ as established by the ~~B~~board. New participants will be assessed a pro-rated payment based on the ~~D~~department's established billing cycle. (3-16-04)()

04. **Supplemental Payments.** If an operator ~~finds it necessary to~~ affects more acreage than the acreage secured through the ~~R~~reclamation ~~F~~fund for ~~the a~~ current period, the ~~D~~department may require supplemental ~~R~~reclamation ~~F~~fund payments. ~~Additional Rreclamation Ffund payments for mineral leases may be required by the Department based on site specific conditions.~~ (3-16-04)()

05. **Assignment or Transfer.** When a ~~mineral~~ lease, ~~mining reclamation~~ plan, or permit is assigned, ~~all~~ financial assurance requirements must be assumed by the new ~~lessee or~~ operator. No ~~R~~reclamation ~~F~~fund payments will be refunded following an assignment. If the new operator ~~or lessee~~ is ineligible to participate in the ~~R~~reclamation ~~F~~fund, the new operator ~~or lessee~~ must provide ~~a traditional performance bond~~ ~~proof of other acceptable financial assurance~~ before the assignment ~~will may~~ be

approved.

(3-16-04)(_____)

06. Non-Payment Constitutes Lack of Bonding. For ~~those~~any operators ~~or lessees required to~~ participateing in the Rreclamation Ffund, non-payment of the annual feepayment shall be considered a failure to provide ~~a traditional performance bond~~ financial assurance as required by the Ddredge Mining Act, Surface Mining mined land reclamation Act, Mineral Leasing Act, or a mineral lease. (3-16-04)(_____)

027. -- 030. (RESERVED)

031. ENFORCEMENT AND FAILURE TO COMPLY.

01. Forfeiture. Prior to withdrawing monies from the Rreclamation Ffund due to a violation of the Ddredge Mining Act, Surface Mining mined land reclamation Act, Mineral Leasing Act, or a mineral lease, the Department shall comply with the forfeiture procedures ~~for traditional performance bond forfeiture set forth in Section 47-1513, Idaho Code.~~ (3-16-04)(_____)

02. Penalties. If an operator fails to provide financial assurance as required by these rules or has forfeited monies from the Rreclamation Ffund and has not repaid those monies, the Board shall be authorized to file liens against personal property and equipment of the operator to recover costs. The operator shall be liable for actual costs of ~~the required financial assurance~~ all unpaid annual payments, interest, and late payment charges, the actual reclamation costs, and administrative costs incurred by the Department in reclaiming the disturbed acres or affected lands. ~~All legal action by the Department shall be in accordance with the Dredge Mining Act, Surface Mining Act, Mineral Leasing Act, or any mineral lease.~~ Authorization to obtain a lien under ~~this~~ese rules and Section 47-1804, Idaho Code, shall be in addition to, not in lieu of, any other legal remedy available to the Board and the Department pursuant to the Ddredge Mining Act, Surface Mining mined land reclamation Act, Mineral Leasing Act, or a mineral lease. (3-16-04)(_____)

~~**03. Procedure for Appeals.** Any operator or lessee aggrieved by any final order of the Board regarding the Reclamation Fund Act shall be entitled to appeal using the procedures as set forth in the Dredge Mining Act, Surface Mining Act, Mineral Leasing Act or a mineral lease. (3-16-04)~~

032. MINIMUM BALANCE FOR THE RECLAMATION FUND.

The Board shall determine a reasonable minimum balance for the Rreclamation Ffund. (3-16-04)(_____)

033. -- 999. (RESERVED)