

Dear Senators BAIR, SIDDOWNAY, Stennett, and
Representatives GIBBS, Gestrin, Erpelding:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the
Idaho Department of Lands:

IDAPA 20.03.01 - Dredge and Placer Mining Operations in Idaho - Proposed Rule (Docket No.
20-0301-1801);

IDAPA 20.03.02 - Rules Governing Exploration, Surface Mining, and Closure of Cyanidation
Facilities - Proposed Rule (Docket No. 20-0302-1801).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 09/24/2018. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 10/23/2018.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4854, or send a written request to the address on the
memorandum attached below.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Resources & Environment Committee and the House Resources & Conservation Committee

FROM: Deputy Division Manager - Katharine Gerrity

DATE: September 07, 2018

SUBJECT: Idaho Department of Lands

IDAPA 20.03.01 - Dredge and Placer Mining Operations in Idaho - Proposed Rule (Docket No. 20-0301-1801)

IDAPA 20.03.02 - Rules Governing Exploration, Surface Mining, and Closure of Cyanidation Facilities - Proposed Rule (Docket No. 20-0302-1801)

1. IDAPA 20.03.01 - Dredge and Placer Mining Operations in Idaho

Summary and Stated Reasons for the Rule

The Idaho Department of Lands submits notice of proposed rule at IDAPA 20.03.01 - Dredge and Placer Mining Operations in Idaho. According to the department, the rulemaking will allow permittees and operators to submit documents by paper copy or in electronic format. In addition, the department notes that the rule now contains required provisions including title and scope, written interpretations, incorporation by reference, office hours, mailing address and street address and public records act compliance. The department states that new abbreviations have also been added to the rule. The department indicates that it has also added references to specific water quality rules, rather than referencing an entire chapter in the Idaho Code, to clarify and direct potential permittees to pertinent rule sections only.

Negotiated Rulemaking / Fiscal Impact

The department states that negotiated rulemaking was conducted. The department does not anticipate any fiscal impact to the general fund.

Statutory Authority

The rulemaking appears to be authorized pursuant to Section 47-1505, Idaho Code, and more broadly, Chapter 15, Title 47, Idaho Code.

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
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Statehouse, P.O. Box 83720
Boise, Idaho 83720-0054

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2. IDAPA 20.03.02 - Rules Governing Exploration, Surface Mining, and Closure of Cyanidation Facilities

Summary and Stated Reasons for the Rule

The Idaho Department of Lands submits notice of proposed rule at IDAPA 20.03.02 - Rules Governing Exploration, Surface Mining, and Closure of Cyanidation Facilities. According to the department, the rule-making will allow permittees and operators to submit documents by paper copy or in electronic format. In addition, the department notes that the rule updates sections relating to office hours and the mailing and street addresses. The department proposes to delete a section relating to reclamation bonds. The provision now provides that only surface mining reclamation bonds obtained after January 1, 1997, may be addressed at actual costs plus ten percent. The department notes that Section 47-1512, Idaho Code, requires bonding for actual costs of reclamation so any bonds calculated prior to 1997 are out of date and do not represent actual costs of reclamation. The department also notes that Section 47-1512, Idaho Code, was amended in 2016 to increase the maximum reclamation bond amount per acre from \$2,500 to \$15,000 and this rulemaking will modify the amount specified in rule to align with that statutory change. Finally, the department states that the rule will require potential and current operators within the 100-year floodplain to illustrate the floodplain and describe the measures that will be implemented to keep surface waters from entering mining operations.

Negotiated Rulemaking / Fiscal Impact

The department states that negotiated rulemaking was conducted. The department does not anticipate any fiscal impact to the general fund.

Statutory Authority

The rulemaking appears to be authorized pursuant to Section 47-1505, Idaho Code, and more broadly, Chapter 15, Title 47, Idaho Code.

cc: Idaho Department of Lands
Amy Johnson

***** PLEASE NOTE *****

Per the Idaho Constitution, all administrative rules must be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

IDAPA 20 – IDAHO DEPARTMENT OF LANDS
20.03.01 – DREDGE AND PLACER MINING OPERATIONS IN IDAHO
DOCKET NO. 20-0301-1801
NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Title 47 Chapter 15, including Section 47-1505, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

PUBLIC HEARING
Thursday, September 20, 2018 – 2:30 p.m.

Idaho State Capitol
Room WW55
700 West Jefferson Street
Boise, ID 83702

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Idaho Department of Lands is developing a web-based portal and information management system that will allow for submittal of applications and other documents electronically. Currently, IDAPA 20.03.01 requires paper copies and, in some instances, certified mail submittals. The proposed changes remove the requirement for paper submittals, which will allow permittees and operators to submit documents by paper copy or in electronic format.

Additional changes include the following:

- Addition of required Sections 001. Title and Scope; 002. Written Interpretations; 004. Incorporation by Reference; 005. Office Hours–Mailing Address-Street Address; and 006. Public Records Act Compliance. These sections are now required in rule but were not when the rules were created and last revised.
- New abbreviations have also been added to the rule.
- IDAPA 20.03.01.022.06 references water quality standards regulations established under Title 39, Chapter 1, Idaho Code. Title 39, Chapter 1 covers multiple areas of the Idaho Department of Environmental Quality's regulatory authority. This rule change proposes adding reference to the specific water quality rules sections of IDAPA: IDAPA 58.01.02 and IDAPA 58.01.11. This change is intended to help clarify and direct potential permittees to pertinent rule sections only.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

No fiscal impact to the state general fund is anticipated as a result of this rulemaking.

NEGOTIATED RULEMAKING: Negotiated rulemaking was conducted pursuant to Section 67-5220(1), Idaho Code. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin [Volume 18-6, Page 80](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

No materials are being incorporated by reference in this rulemaking.

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0046. PUBLIC RECORDS ACT COMPLIANCE.

Confidentiality of Information. Notice of exploration as required under Title 47, Chapter 1314(b), 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. However, the provisions of Title 74, Chapter 1, Idaho Code, shall apply after July 1, 1993. The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code and are public records. (4-1-91)()

0057. -- 009. (RESERVED)

010. DEFINITIONS.

- 01. Act.** The Idaho Placer and Dredge Mining Protection Act, Title 47, Chapter 13, Idaho Code. (4-1-91)
- 02. Approximate Previous Contour.** A contour reasonably comparable to that contour existing prior to disturbance, or that blends with the adjacent topography. (4-1-91)
- 03. Best Management Practices (“BMPs”).** Methods, measures, or practices to prevent or reduce nonpoint source (NPS) water pollution, including, but not limited to, structural and nonstructural controls, and operation and maintenance procedures. Usually, BMPs are applied as a system of practices rather than a single practice. BMPs are selected on the basis of site-specific conditions that reflect natural background conditions; political, social, economic, and technical feasibility; and stated water quality goals. (4-1-91)()
- 04. Board.** The State Board of Land Commissioners or any department, commission, or agency that may lawfully succeed to the powers and duties of such board. (4-1-91)
- 05. Department.** The Idaho Department of Lands whose business address is 300 North 6th Street, Suite 103, PO Box 83720, Boise, Idaho 83720-0050. (4-1-91)
- 06. DEQ.** The Department of Environmental Quality. (4-1-91)
- 07. Director.** The director of the Department of Lands or such representative as may be designated by the director. (4-1-91)
- 08. Disturbed Land or Affected Land.** Land, natural watercourses, or existing stockpiles and waste piles affected by placer or dredge mining, remining, exploration, stockpiling of ore wastes from placer or dredge mining, or construction of roads, tailings ponds, structures, or facilities appurtenant to placer or dredge mining operations. (4-1-91)
- 09. Final Order of the Board.** A written notice of rejection or approval, the order of a hearing officer at the conclusion of a hearing, or any other order of the board where additional administrative remedies are not available. (4-1-91)
- 10. Hearing Officer.** That person duly appointed by the board to hear proceedings under Section 47-1320, Idaho Code. It also means that person selected by the director to hear proceedings initiated under Section 030 or Section 051 of these rules. (4-1-91)
- 11. Mine Panel.** That area designated by the permittee as an identifiable portion of a placer or dredge mine on the map submitted pursuant to Section 47-1317, Idaho Code. (4-1-91)
- 12. Mineral.** Any ore, rock or substance extracted from a placer deposit or from an existing placer stockpile or wastepile, but does not include coal, clay, stone, sand, gravel, phosphate, uranium, oil or gas. (4-1-91)
- 13. Motorized Earth-Moving Equipment.** Backhoes, bulldozers, front-loaders, trenchers, core drills, draglines, and suction dredges with an intake diameter exceeding eight (8) inches, and other similar equipment.

- (4-1-91)
- 14. Mulch.** Vegetation residues or other suitable materials to aid in the stabilization of soil and soil moisture conservation. (4-1-91)
- 15. Natural Watercourse.** Any stream in the state of Idaho having definite bed and banks, and which confines and conducts continuously flowing water. (4-1-91)
- 16. Overburden.** Material extracted by a permittee which is not a part of the material ultimately removed from a placer or dredge mine and marketed by a permittee, exclusive of mineral stockpiles. Overburden is comprised of topsoil and waste. (4-1-91)
- 17. Overburden Disposal Area.** Land surface upon which overburden is piled or planned to be piled. (4-1-91)
- 18. Permanent Cessation.** Mining operations as to the whole or any part of the permit area have stopped and there is substantial evidence that such operations will not resume within one (1) year. The date of permanent cessation is the last day when mining operations are known or can be shown to have occurred. (4-1-91)
- 19. Permit Area.** That area designated under Section 021 as the site of a proposed placer or dredge mining operation, including all lands to be disturbed by the operation. (4-1-91)
- 20. Permittee.** The person in whose name the permit is issued and who is to be held responsible for compliance with the conditions of the permit by the department. (4-1-91)
- 21. Person.** Any person, corporation, partnership, association, or public or governmental agency engaged in placer or dredge mining, whether individually, jointly, or through subsidiaries, agents, employees, or contractors. (4-1-91)
- 22. Pit.** An excavation created by the extraction of minerals or overburden during placer mining or exploration operations. (4-1-91)
- 23. Placer Deposit.** Naturally occurring unconsolidated surficial detritus containing valuable minerals, whether located inside or outside the confines of a natural watercourse. (4-1-91)
- 24. Placer Stockpile.** Placer mineral extracted during past or present placer or dredge mining operations and retained at the mine for future rather than immediate use. (4-1-91)
- 25. Placer or Dredge Exploration Operation.** Activities including, but not limited to, the construction of roads, trenches, and test holes performed on a placer deposit for the purpose of locating and determining the economic feasibility of extracting minerals by placer or dredge mining. (4-1-91)
- 26. Placer or Dredge Mining or Dredge or Other Placer Mining.** The extraction of minerals from a placer deposit, including re-mining for sale, processing, or other disposition of earth material excavated from previous placer or dredge mining. (4-1-91)
- 27. Placer or Dredge Mining Operation.** Placer or dredge mining which disturbs in excess of one-half (1/2) acre of land during the life of the operation. (4-1-91)
- 28. Reclamation.** The process of restoring an area disturbed by a placer or dredge mining operation or exploration operation to its original or another beneficial use, considering land uses, possible future uses, and surrounding topography. The objective is to re-establish a diverse, self-perpetuating plant community, and to minimize erosion, remove hazards, and maintain water quality. (4-1-91)
- 29. Revegetation.** The establishment of the premining vegetation or a comparable vegetative cover on the land disturbed by placer or dredge mining operations. (4-1-91)

30. Road. A way including the bed, slopes, and shoulders constructed within the circular tract circumscribed by a placer or dredge mining operation, or constructed solely for access to a placer or dredge mining operation or placer or dredge exploration operation. A way dedicated to public multiple use or being used by a governmental land manager or private landowner at the time of cessation of operations and not constructed solely for access to a placer or dredge mining operation or exploration operation, shall not be considered a road. (4-1-91)

31. Settling Pond. A manmade enclosure or natural impoundment structure constructed and used for the purpose of treating mine process water and/or runoff water from adjacent disturbed areas by the removal or settling of sediment particles. Several types of settling ponds or a series of smaller ponds may be used in water management. The most common type is a recycle or recirculation pond which is used to pump clarified water back to the wash plant operation. (4-1-91)

32. Surface Waters. The surface waters of the state of Idaho. (4-1-91)

33. Topsoil. The unconsolidated mineral and organic matter naturally present on the surface of the earth that is necessary for the growth and regeneration of vegetation. (4-1-91)

011. ABBREVIATIONS.

01. BMP. Best Management Practices. ()

02. DEO. Department of Environmental Quality. ()

0142. PURPOSE AND GENERAL PROVISIONS.

01. Policy. It is the policy of the state of Idaho to protect the lands, streams, and watercourses within the state from destruction by placer mining, and to preserve them for the enjoyment, use, and benefit of all of the people, and that clean water in the streams of Idaho is in the public interest. (4-1-91)

02. Purpose. These rules are intended to implement the requirements for operation and reclamation of placer and dredge mining set forth in the Idaho Code. Compliance with these rules will allow removal of minerals while preserving water quality and ensuring rehabilitation for beneficial use of the land following mining. Placer and dredge mining is expressly prohibited upon certain waterways included in the federal wild and scenic rivers system. It is also the purpose of these rules to implement the state of Idaho's antidegradation policy as set out in Executive Order No. 88-23 as it pertains to placer mining and exploration operations. (4-1-91)

03. General Provisions. In general, these rules establish: (4-1-91)

a. Requirements for placer mine exploration operations; (4-1-91)

b. Procedures for securing a placer and dredge mining permit; (4-1-91)

c. The requirements for posting a performance bond as a condition of such permit to ensure the completion of rehabilitation operations; (4-1-91)

d. Procedures for initial and periodic inspection of placer and dredge mining operations to ensure compliance with these rules; (4-1-91)

e. Prohibition of placer and dredge mining on designated watercourses (see Section 060); and (4-1-91)

f. Prohibitions against placer and dredge mining on certain lands when not in the public interest. (4-1-91)

04. Compliance with Other Laws. Placer and dredge exploration operations and mining operations shall comply with all applicable rules and laws of the state of Idaho including, but not limited to, the following: (4-1-91)

a. Idaho Environmental Protection and Health Act, Title 39, Chapter 1, Idaho Code, and rules as promulgated and administered by the Idaho Department of Environmental Quality. (4-1-91)

b. Idaho Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code, and applicable rules as promulgated and administered by the Idaho Department of Water Resources. (4-1-91)

c. Idaho Dam Safety Act, Section 42-1710 through 42-1721, Idaho Code, and applicable rules and regulations as promulgated and administered by the Idaho Department of Water Resources. (4-1-91)

0123. APPLICABILITY.

01. All Lands in State. These rules apply to all lands within the state, including private and federal lands, which are disturbed by placer or dredge mining conducted after November 24, 1954. (4-1-91)

02. Types of Operations. These rules apply to placer and dredge mining operations and placer and dredge exploration operations as defined under Section 47-1313, Idaho Code, and Subsections 010.25, 010.26, and 010.27 and to the following activities: (4-1-91)

a. The extraction of minerals from a placer deposit, including the removal of vegetation, topsoil, overburden, and minerals; construction, and operation of on-site processing equipment; disposal of overburden and waste materials; design and operation of siltation and other water quality control facilities; and other activities contiguous to the mining site that disturb land and affect water quality and/or water quantity. (4-1-91)

b. All exploration activities conducted upon a placer deposit using motorized earth-moving equipment. (4-1-91)

03. Nonapplicability. These rules do not apply to mining operations regulated by the Idaho Surface Mining Act; neither do they apply to surface disturbance caused by the underground mining of a placer deposit, unless the deposit outcrops on or near the surface and the operation will result in the probable subsidence of the land surface. (4-1-91)

04. Stream Channel Alterations. These rules do not exempt the permittee from obtaining a stream channel alteration permit if required by the Idaho Department of Water Resources. (4-1-91)

05. Navigational Improvements. These rules do not apply to dredging operations conducted for the sole purpose of establishing and maintaining a channel for navigation. (4-1-91)

06. Suction Dredges. These rules do not apply to dredging operations in streams or riverbeds using suction dredges with an intake diameter of eight (8) inches or less. However, these rules do not affect or exempt the applicability of Section 47-701, Idaho Code, regarding leasing of the state-owned beds of navigable lakes, rivers, and streams, Section 47-703A, Idaho Code, regarding exploration on navigable lakes and streams, and Section 39-118, Idaho Code, regarding review of plans for waste treatment or disposal facilities such as settling or recycle ponds. (4-1-91)

0134. ADMINISTRATION.

The Department of Lands shall administer these rules under the direction of the director. (4-1-91)

0145. -- 019. (RESERVED)

020. PLACER OR DREDGE EXPLORATION OPERATIONS.

01. Notice. Any person desiring to conduct placer or dredge exploration operations using motorized earth-moving equipment shall, within seven (7) days of commencing exploration, notify the director *by certified mail.* The notice shall include the following: (4-1-91)()

a. The name and address of the operator; (4-1-91)

and b. The legal description of the exploration operation and its starting and estimated completion date; (4-1-91)

c. The anticipated size of the exploration operation and the general method of operation. (4-1-91)

02. Confidentiality. The exploration notice shall be treated confidential pursuant to Sections 74-107 and 47-1314, Idaho Code. (4-1-91)

03. One-Half Acre Limit. Any placer or dredge exploration operation which causes a cumulative surface disturbance in excess of one-half (1/2) acre of land, including roads, shall be considered a placer or dredge mining operation and subject to the requirements outlined in Sections 021 through 065. Lands disturbed by any placer or dredge exploration operation which causes a cumulative surface disturbance of less than one-half (1/2) acre of land, including roads, shall be restored to conditions reasonably comparable to conditions existing prior to the placer or dredge exploration operation and as outlined in Subsection 020.04. (4-1-91)

04. Reclamation Required. The following reclamation activities, required to be conducted on exploration sites, shall be performed in a workmanlike manner with all reasonable diligence, and as to a given exploration drill hole, road, pit, or trench, within one (1) year after abandonment thereof: (4-1-91)

a. Drill holes will be plugged within one (1) year of abandonment with a permanent concrete or bentonite plug. (4-1-91)

b. Restore all disturbed lands, including roads, to conditions reasonably comparable to conditions existing prior to the placer or dredge exploration operations. (47-1314(b)) (4-1-91)

c. Conduct revegetation activities in accordance with Subsection 040.17. Unless otherwise required by a federal agency, one (1) pit or trench on a federal mining claim showing discovery, may be left open pending verification by federal mining examiners. Such abandoned pits and trenches shall be reclaimed within one (1) year of verification; (4-1-91)

d. If water runoff from exploration operations causes siltation or other pollution of surface waters, the operator shall prepare disturbed lands and adjoining lands under his or her control, as is necessary to meet state water quality standards. (4-1-91)

e. Abandoned lands disturbed by an exploration operation shall be top-dressed to the extent that such overburden is reasonably available from any pit or other excavation created by the exploration operation, with that type of overburden that is conducive to the control of erosion or the growth of vegetation that the operator elects to plant thereon; (4-1-91)

f. Any water containment structure created in connection with exploration operations shall be constructed, maintained, and reclaimed so as not to constitute a hazard to human health or the environment. (4-1-91)

021. APPLICATION PROCEDURE FOR PLACER OR DREDGE MINING PERMIT.

01. Approved Reclamation Plan Required. No permittee shall conduct placer or dredge mining operations, as defined in these rules, on any lands in the state of Idaho until the placer mining permit has been approved by the board, the department has received a bond meeting the requirements of these rules, and the permit has been signed by the director and the permittee. (4-1-91)

02. Application Package. The permittee must submit ~~five (5) copies of the placer mining~~ a complete application package, for each separate placer mine or mine panel, before the placer permit will be reviewed. Separate placer mines are individual, physically disconnected operations. The complete application package consists of: (4-1-91)()

a. An application completed by the applicant on a form provided by the director; (4-1-91)

b. A map or maps of the proposed mining operation which includes the information required under Subsection 021.04; (4-1-91)

c. A reclamation plan, in map and narrative form, which includes the information required under Subsection 021.06. The map and reclamation plan may be combined on one (1) sheet if practical; (4-1-91)

d. Document(s) identifying and assessing foreseeable, site-specific nonpoint sources of water quality impacts upon adjacent surface waters, and the best management practices the applicant will take to control such nonpoint source impacts; (4-1-91)

e. When the director determines, after consultation with DEQ, that there is an unreasonably high potential for nonpoint source pollution of adjacent surface waters, the director shall request, and the applicant shall provide to the director, baseline pre-project surface water monitoring information and furnish ongoing monitoring data during the life of the project. This provision shall not require any additional baseline preproject surface water monitoring information or ongoing monitoring data where such information or data is already required to be provided pursuant to any federal or state law and is available to the director; (4-1-91)

f. An out-of-state permittee shall designate an in-state agent authorized to act on behalf of the permittee. In case of an emergency requiring action to be taken to prevent environmental damage, the authorized agent will be notified as well as the permittee; and (4-1-91)

g. An application fee of fifty dollars (\$50) for each ten (10) acres or fraction of land included in an application for a new mining permit, or of land to be affected or added in an amended application to an existing mining permit, must be included with the application. No application fee shall exceed one thousand dollars (\$1,000). (4-1-91)

03. Incomplete Applications. An application for a permit may be returned for correction if the information provided on the application form or associated mine map(s) or reclamation plan is incomplete or otherwise unsatisfactory. The director shall not proceed on the application until all necessary information is submitted. (4-1-91)

a. If the applicant is not the owner of the lands described in the application, or any part thereof, the land owner shall endorse his approval of the application prior to issuance of a permit. The federal government, as a property owner, will be notified of the application, and asked to endorse the application as property owner. For mining operations proposed upon land under a mining lease, either the signature of the lessor shall be affixed to the application or a copy of the complete lease attached to the application. (4-1-91)

04. Requirements of Maps. Vicinity maps shall be prepared on standard United States Geological Survey, seven and one-half (7.5) minute quadrangle maps, or equivalent. In addition, maps of the proposed placer mining operation site shall be of sufficient scale to adequately show the following: (4-1-91)

a. The location of existing roads and anticipated access and main haulage roads planned for construction in connection with the mining operation, along with approximate dates for construction, reconstruction, and abandonment; (4-1-91)

b. The approximate location, and the names of all known streams, creeks, springs, wells, or bodies of water within one thousand (1,000) feet of the mining operation; (4-1-91)

c. The approximate boundaries of all lands to be disturbed in the process of mining, including legal description to the quarter-quarter section; (4-1-91)

d. The approximate boundaries and acreage of the lands that will become disturbed land as a result of the placer or dredge mining operation during the first year of operations following issuance of a placer mining permit; (4-1-91)

e. The planned location and configuration of pits, mineral stockpiles, topsoil stockpiles, and waste dumps within the mining property; (4-1-91)

f. Scaled cross-sections, of length and width, which are representative of the placer or dredge mining operation, showing the surface contour prior to mining and the expected surface contour after reclamation activities have been completed; (4-1-91)

g. The location of required settling ponds, the design plans, construction specifications and narrative to show they meet both operating requirements and protection from erosion, seepage, and flooding that can be anticipated in the area. Where a dredge is operating in a stream, describe by drawing and narrative, the operation of the filtration equipment to be used to clarify the water. (4-1-91)

h. Surface and mineral control or ownership of appropriate scale for boundary identification. (4-1-91)

05. Settling Ponds. Detailed plans and specifications for settling ponds shall be drawn to a scale of one (1) inch = ten (10) feet and include the following: (4-1-91)

a. A detailed map of the settling pond location, including: (4-1-91)

i. Dimensions and orientation of the settling ponds and/or other wastewater treatment components of the operation; (4-1-91)

ii. Distance from surface waters; (4-1-91)

iii. Pond inlet/outlet locations including emergency spillways and detailed description of control structures and piping; (4-1-91)

iv. Location of erosion control structures; and (4-1-91)

v. Ten (10) year flood elevation (probable high water mark). (4-1-91)

b. A detailed cross-section of the pond(s) including: (4-1-91)

i. Dimensions and orientation; (4-1-91)

ii. Proposed sidewall elevations; (4-1-91)

iii. Proposed sidewall slope; (4-1-91)

iv. Sidewall width; (4-1-91)

v. Distance from and elevation above all surface water; and (4-1-91)

vi. Slope of settling pond location. (4-1-91)

c. Narrative of the construction method(s) describing: (4-1-91)

i. Bottom material; (4-1-91)

ii. Sidewall material; (4-1-91)

iii. Pond volume; (4-1-91)

iv. Volume of water to be used in the wash plant; (4-1-91)

v. Discharge or land application requirements; (4-1-91)

vi. Any pond liners or filter materials to be installed; and (4-1-91)

- viii. Compaction techniques. (4-1-91)
- d. If the proposed ponds are: (4-1-91)
 - i. Less than two thousand five hundred (2,500) feet square surface area; (4-1-91)
 - ii. Less than four (4) feet high; (4-1-91)
 - iii. Greater than fifty (50) feet from surface water; and (4-1-91)
 - iv. Constructed on slopes of three: one (3:1) or flatter, the plans and specifications for settlings ponds shall contain information in Subsections 021.05.a.i., 021.05.a.ii., and 021.05.a.iv.; 021.05.b.i., 021.05.b.ii., 021.05.b.v. and 021.05.b.vi. This information may be prepared as a sketch map showing appropriate elevations, distances and other required details. (4-1-91)

06. Requirements for Reclamation Plan. A reclamation plan must be submitted in map and narrative form and include the following: (4-1-91)

a. Show how watercourses disturbed by the mining operation shall be replaced on meander lines with a pool structure conducive to good fish and wildlife habitat and recreational use. Show how and where riprap or other methods of bank stabilization will be used to ensure that, following abandonment, the stream erosion will not exceed the rate normally experienced in the area. If necessary, show how the replaced watercourse will not contribute to degradation of water supplies; (4-1-91)

b. Describe and show the contour of the proposed mine site after final backfilling and/or grading, with grades listed for slopes after mining; (4-1-91)

c. On a drainage control map, show the best management practices to be utilized to minimize erosion on disturbed lands; (4-1-91)

d. Show roads to be reclaimed upon completion of mining; (4-1-91)

e. Show plans for both concurrent and final revegetation of disturbed lands. Indicate soil types, slopes, precipitation, seed rates, species, topsoil, or other growth medium storage and handling, time of planting, method of planting and, if necessary, fertilizer and mulching rates; (4-1-91)

f. The planned reclamation of tailings or sediment ponds; (4-1-91)

g. An estimate of total reclamation cost to be used in establishing bond amount. The cost estimate should include the approximate cost of grading, revegetation, equipment mobilization, labor, and administrative overhead. (4-1-91)

h. Make a premining estimate of trees on the site by species and forest lands utilization consideration in reclamation. (4-1-91)

07. State Approval Required. Approval of a placer mining permit must be obtained under these rules, even if approval of such plan has been or is obtained from an appropriate federal agency. (4-1-91)

08. Application Review and Inspection. If the director determines that an inspection is necessary, the applicant may be contacted and asked that he or his duly authorized employee or representative be present for inspection at a reasonable time. An inspection may be required prior to issuance of the permit. The applicant shall make such persons available for the purpose of inspection (see Subsection 051.01). Failure to provide a representative does not mean that the state will not conduct such inspection. (4-1-91)

022. PROCEDURES FOR REVIEW AND DECISION UPON AN APPLICATION.

01. Decision on Application. Following director review of an application for a new permit or to amend

an existing permit and opportunity to correct any deficiencies, the board shall approve or disapprove the application and the director shall notify the applicant of the board's decision by mail. Such notice shall contain any reservations conditioned with the approval, or the information required to be given under Subsections 022.07 and 022.09 if disapproved. If approved, a permit shall be issued after the bonding requirements of Section 035 are met. No mining shall be allowed until the permit is bonded and applicant is notified by mail or telephone of approval. (4-1-91)

02. Public Hearings. For the purpose of determining whether a proposed application complies with these rules, the director may call for a public hearing, as described in Section 030. (4-1-91)

03. Adverse Weather. If weather conditions prevent the director from inspecting the proposed mining site to acquire the information required to evaluate the application, the application may be placed in suspense, pending improved weather conditions. The applicant will be notified in writing of this action. (4-1-91)

04. Interagency Comment. Nonconfidential materials submitted under Section 021 shall be forwarded by the director to the Departments of Water Resources, Environmental Quality (DEQ), and Fish and Game for review and comment. If operations are to be located on federal lands, the department will notify the U. S. Bureau of Land Management or the U.S. Forest Service. The director may provide public notice on receipt of a reclamation plan. In addition, a copy of an application will be provided to individuals who request the information in writing, subject to Title 9, Chapter 3, Idaho Code. (4-1-91)

05. Stream Alteration Permits. No permit will be issued proposing to alter, occupy or to dredge any stream or watercourse without notification to the Department of Water Resources of the pending application. The Department of Water Resources shall respond to said notification within twenty (20) days. If a stream channel alteration permit is required, it must be issued prior to issuance of the placer and dredge permit. (4-1-91)

06. Water Clarification. No permit shall be issued until the director is satisfied that the methods of water clarification proposed by the applicant are of sound engineering design and capable of meeting the water quality standards established under Title 39, Chapter 1, Idaho Code, and IDAPA 58.01.02, "Water Quality Standards," IDAPA, 58.01.11. "Ground Water Quality Rule." ~~(4-1-91)~~()

07. Permit Denial Authority. The State Board of Land Commissioners shall have the power to deny any application for a permit on state lands, streams, or riverbeds, or on any unpatented mining claims, upon its determination that a placer or dredge mining operation on the area proposed would not be in the public interest, giving consideration to economic factors, recreational use for such lands, fish and wildlife habitat, and other factors which in the judgement of the board may be pertinent, and may deny any application upon notification by the Department of Water Resources that the granting of such permit would result in permanent damage to the stream channel. (Section 47-1317(j), Idaho Code) (4-1-91)

08. Permit Conditions. If an application fails to meet the requirements of these rules, the board may issue a permit subject to conditions that bring the application into compliance with these rules. The applicant may accept or refuse the permit. Refusal to accept the permit shall be considered a denial under Subsection 022.09. (4-1-91)

09. Amended Applications. If the board disapproves the application, the applicant shall be informed of the rules that have not been complied with, the manner in which they have not been complied with, and the requirements necessary to correct the deficiencies. The applicant may then submit an amended application, which will be processed as described in Section 022. (4-1-91)

10. Permit Offering. Upon approval by the board, the applicant will be notified of the action and the amount of bond required. Upon receipt of the required bond, the permit will be sent to the applicant for signature. If the bond and the permit, signed by the applicant, are not received within twelve (12) months of board action, the approval shall be automatically rescinded, except that upon written request of the applicant, and for good cause, the director may defer decision of the board's approval for a reasonable period of time not to exceed one (1) year. The director shall notify the applicant of his decision in writing. (4-1-91)

11. Reclamation Obligations. The permit issued by the board shall govern and determine the nature and extent of the reclamation obligations of the permittee. (4-1-91)

IDAPA 20 – IDAHO DEPARTMENT OF LANDS
20.03.02 – RULES GOVERNING EXPLORATION, SURFACE MINING,
AND CLOSURE OF CYANIDATION FACILITIES

DOCKET NO. 20-0302-1801

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Title 47 Chapter 15, including Section 47-1505, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

PUBLIC HEARING
Thursday, September 20, 2018 – 4:00 p.m.

Idaho State Capitol
Room WW55
700 West Jefferson Street
Boise, ID 83702

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Idaho Department of Lands is developing a web-based portal and information management system that will allow for submittal of applications and other documents electronically. Currently, IDAPA 20.03.02 requires paper copies and, in some instances, certified mail submittals. The proposed changes remove the requirement for paper submittals, which will allow permittees and operators to submit documents by paper copy or in electronic format.

Additional changes include the following:

- Updates to Section 005-Office Hours – Mailing Address and Street Address.
- Addition of new abbreviations.
- IDAPA 20.03.02.120.03 states that only surface mining reclamation bonds obtained after January 1, 1997, may be addressed at actual costs plus ten percent (10%). As Section 47-1512, Idaho Code, requires bonding for actual costs of reclamation, any bonds calculated prior to 1997 are out of date and do not represent actual costs of reclamation. It is suggested that this section be deleted.
- Section 47-1512, Idaho Code, was changed in 2016 to increase the maximum reclamation bond amount per acre from \$2,500 to \$15,000 per acre, but IDAPA 20.03.02 still lists the \$2,500 maximum amount. This change will update the rules to align with statute.
- Requiring potential and current operators within the 100-year floodplain to illustrate the floodplain and describe the measures that will be implemented to keep surface waters from entering mining operations.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

No fiscal impact to the state general fund is anticipated as a result of this rulemaking.

NEGOTIATED RULEMAKING: Negotiated rulemaking was conducted pursuant to Section 67-5220(1), Idaho Code. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin [Volume 18-6, Page 82](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

No materials are being incorporated by reference in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Todd Drage, Regulatory Minerals Program Manager, at (208) 334-0247.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 26, 2018.

Dated this 5th day of September, 2018.

Todd Drage, Regulatory Minerals Program Manager
Resource Protection and Assistance
Idaho Department of Lands
300 N. 6th St, Suite 103
Boise, ID 83720-0050
Phone: (208) 334-0247
Fax: (208) 769-3698

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 20-0302-1801
(Only Those Sections With Amendments Are Shown.)

005. ~~INCLUSIVE GENDER.~~

~~For all sections and subsections of these rules, the terms and references used in the masculine sense include the feminine sense and vice versa, as appropriate. (3-30-06)~~

~~006. OFFICE – OFFICE HOURS – MAILING ADDRESS AND – STREET ADDRESS – WEB ADDRESS.~~

The principal place of business of the Department of Lands 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-~~2339~~3698. The Department's web address is located at www.idl.idaho.gov. (3-30-06)()

~~007. PUBLIC RECORDS ACT COMPLIANCE.~~

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code and are public records. (3-30-06)

~~008. -- 009. (RESERVED)~~

010. DEFINITIONS.

01. Affected Land. The land area included in overburden disposal areas, mined areas, mineral stockpiles, roads, tailings ponds, and other areas disturbed at the surface mining operation site. (11-1-89)

02. Approximate Previous Contour. A contour that is reasonably comparable to that contour existing prior to disturbance, or that blends with the adjacent topography. (11-1-89)

- 03. Best Management Practices** (~~“BMPs”~~). Practices, techniques or measures developed, or identified, by the designated agency and identified in the state water quality management plan, as described in IDAPA 58.01.02, “Water Quality Standards and Wastewater Treatment Requirements,” which are determined to be a cost-effective and practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality goals. (3-30-06)()
- 04. Board.** The State Board of Land Commissioners or any Department, commission, or agency that may lawfully succeed to the powers and duties of such Board. (11-1-89)
- 05. Chapter.** The Idaho Surface Mining Act, Title 47, Chapter 15, Idaho Code. (3-30-06)
- 06. Cyanidation.** The method of extracting target precious metals from ores by treatment with cyanide solution, which is the primary leaching agent for extraction. (3-30-06)
- 07. Cyanidation Facility.** That portion of a new ore processing facility, or a material modification or a material expansion of that portion of an existing ore processing facility, that utilizes cyanidation and is intended to contain, treat, or dispose of cyanide containing materials including spent ore, tailings, and process water. (3-30-06)
- 08. Department.** The Idaho Department of Lands. Its business address is 300 North 6th Street, Suite 103, Boise, Idaho 83720. (7-1-98)
- 09. DEQ.** The Department of Environmental Quality. (11-1-89)
- 10. Director.** The head of the Department of Lands or such officer as may lawfully succeed to the powers and duties of said director. It shall also mean such representative as may be designated by the director. (11-1-89)
- 11. Discharge.** With regard to cyanidation facilities, when used without qualification, any spilling, leaking, emitting, escaping, leaching, or disposing of a pollutant into the waters of the state. (3-30-06)
- 12. Exploration Drill Holes.** Holes drilled from the surface to locate mineral bodies and to determine the mineability and merchantability thereof. (11-1-89)
- 13. Exploration Operations.** Activities performed on the surface of lands to locate mineral bodies and to determine the mineability and merchantability thereof. These activities include, but are not limited to, construction of roads, trenches, and exploration drill holes. (11-1-89)
- 14. Exploration Roads.** Roads constructed to locate mineral bodies and to determine the mineability and merchantability thereof. (11-1-89)
- 15. Exploration Trenches.** Trenches constructed to locate mineral bodies and to determine the mineability and merchantability thereof. (11-1-89)
- 16. Final Order of the Board.** A written notice of rejection, the order of a hearing officer at the conclusion of a hearing, or any other order of the Board where additional administrative remedies are not available. (11-1-89)
- 17. Groundwater.** Any water of the state which occurs beneath the surface of the earth in a saturated geological formation of rock or soil. (3-30-06)
- 18. Hearing Officer.** That person selected by the Board to hear proceedings under Section 47-1513, Idaho Code. It also means that person selected by the director to hear proceedings initiated under Section 110 or Section 160 of these rules. (11-1-89)
- 19. Land Application.** With regard to cyanidation facilities, a process or activity involving application of process water, wastewater, surface water, or semi-liquid material to the land for the purpose of disposal, pollutant removal, or groundwater recharge. (3-30-06)

- 20. Material Change.** (3-30-06)
- a.** For surface mining, a change which deviates from the approved reclamation plan and causes one (1) of the following to occur: (3-30-06)
- i.** Results in a substantial adverse affect to the geotechnical stability of overburden disposal areas, topsoil, stockpiles, roads, embankments, tailings facilities or pit walls; (7-1-98)
 - ii.** Substantially modifies surface water management, not to include routine implementation and maintenance of BMPs; (3-30-06)
 - iii.** Exceeds the permitted acreage; or (7-1-98)
 - iv.** Increases overall estimated reclamation costs by more than fifteen percent (15%). (7-1-98)
- b.** For cyanidation facilities, a change which causes one (1) of the following to occur: (3-30-06)
- i.** A substantial adverse effect to the geotechnical stability of the cyanidation facilities; (3-30-06)
 - ii.** The need for a substantial change in the water management plan. (3-30-06)
 - iii.** Increases in overall estimated permanent closure costs by more than fifteen percent (15%). (3-30-06)
- 21. Material Modification or Material Expansion.** With regard to cyanidation facilities: (3-30-06)
- a.** The addition of a new beneficiation process, or a significant change in the capacity of an existing beneficiation process, which was not identified in the original application and that significantly increases the potential to degrade the waters of the state. Such process could include, but is not limited to, heap leaching and process components for milling; or (3-30-06)
- b.** A significant change in the location of a proposed process component or site condition which was not adequately described in the original application; or (3-30-06)
- c.** A change in the beneficiation process that alters the characteristics of the waste stream in a way that significantly increases the potential to degrade the waters of the state. (3-30-06)
- d.** For a cyanidation facility with an existing permit that did not actively add cyanide after January 1, 2005, reclamation and closure related activities shall not be considered to be material modifications or material expansions of the cyanidation facility. (3-30-06)
- 22. Material Stabilization.** Managing or treating spent ore, tailings, other solids and/or sludges resulting from the cyanidation process in such a manner to minimize waters or all other applied solutions from migrating through the material and transporting pollutants associated with the cyanidation facility ensuring that all discharges comply with all applicable standards and criteria. (3-30-06)
- 23. Mine Panel.** That area designated by the operator as a panel of a surface mine on the map submitted pursuant to Section 47-1506, Idaho Code. (11-1-89)
- 24. Mined Area.** Surface of land from which overburden or minerals have been removed other than by drilling of exploration drill holes. (11-1-89)
- 25. Mineral.** Coal, clay, stone, sand, gravel, metalliferous and non-metalliferous types of ores, and any other similar, solid material or substance of commercial value to be excavated from natural deposits on or in the earth. (11-1-89)

- 26. Mineral Stockpile.** Mineral extracted during surface mining operations and retained at the surface mine for future rather than immediate use. (11-1-89)
- 27. Motorized Earth-Moving Equipment.** Backhoes, bulldozers, front-loaders, trenchers, core drills, and other similar equipment. (11-1-89)
- 28. Neutralization.** Treatment of process waters such that discharge or final disposal of those waters does not, or shall not violate all applicable standards and criteria. (3-30-06)
- 29. 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 or exploration operations, or engaged in the operation and/or permanent closure of a cyanidation facility, whether individually, jointly, or through subsidiaries, agents, employees, or contractors and shall mean every governmental agency owning or controlling the use of any surface mine when the mineral extracted is to be used by or for the benefit of such agency. It shall not include any such governmental agency with respect to those surface mining or exploration operations as to which it grants mineral leases or prospecting permits or similar contracts, but nothing herein shall relieve the operator acting pursuant to a mineral lease, prospecting permit or similar contract from the terms of the chapter. (3-30-06)
- 30. Overburden.** Material extracted by an operator which is not a part of the material ultimately removed from a surface mine and marketed by an operator, exclusive of mineral stockpiles. (11-1-89)
- 31. Overburden Disposal Area.** Land surface upon which overburden is piled or planned to be piled. (11-1-89)
- 32. Peak.** A projecting point of overburden. (11-1-89)
- 33. Permanent Closure.** Those activities which result in neutralization, material stabilization, and decontamination of cyanidation facilities and/or facilities' final reclamation. (3-30-06)
- 34. Permanent Closure Plan.** A description of the procedures, methods, and schedule that will be implemented to meet the intent and purpose of the chapter in treating and disposing of cyanide-containing materials including spent ore, tailings, and process water and in controlling and monitoring discharges and potential discharges for a reasonable period of time based on site specific conditions. (3-30-06)
- 35. Permit.** When used without qualification, any written authorization by the Department of Environmental Quality, issued pursuant to the application, public participation, and appeal procedures in IDAPA 58.01.13, "Rules for Ore Processing by Cyanidation," governing the location, operation and maintenance, monitoring, seasonal and permanent closure, discharge response, and design and construction of a new cyanidation facility or a material expansion or material modification to a cyanidation facility. (3-30-06)
- 36. Pilot Facility.** (3-30-06)
- a.** A testing cyanidation facility that is constructed primarily to obtain data on the effectiveness of the beneficiation process to determine: (3-30-06)
- i.** The feasibility of metals recovery from an ore; or (3-30-06)
- ii.** The optimum operating conditions for a predetermined process to extract values from an ore. (3-30-06)
- b.** A pilot or testing cyanidation facility operated for one (1) year for a single test or two (2) years for multiple tests, during which time no more than ten thousand (10,000) tons of ore are evaluated for the testing process(es), unless the applicant can demonstrate that a greater amount is necessary for a specific purpose in the testing process. (3-30-06)
- 37. Pit.** An excavation created by the extraction of minerals or overburden during surface mining

operations. (11-1-89)

38. Pollutant. Chemicals, chemical waste, process water, biological materials, radioactive materials, or other materials which, when discharged cause or contribute adverse effects to any beneficial use, or for any other reason, may impact the surface or ground waters of the state. (3-30-06)

39. Post Closure. The period after completion of permanent closure when the operator is monitoring the effectiveness of the permanent closure activities. Post closure shall last a minimum of twelve (12) months, but may extend until the cyanidation facility is shown to be in compliance with the stated permanent closure objectives and the requirements of the chapter. (3-30-06)

40. Process Waters. Any liquids which are intentionally or unintentionally introduced into any portion of the cyanidation process. These liquids may contain cyanide or other minerals, meteoric water, ground or surface water, elements and compounds added to the process solutions for leaching or the general beneficiation of ore, or hazardous materials that result from the combination of these materials. (3-30-06)

41. Reclamation. The process of restoring an area affected by a surface mining operation to its original or another beneficial use, considering previous uses, possible future uses, and surrounding topography. The objective is to re-establish a diverse, self-perpetuating plant community, and to minimize erosion, remove hazards, and maintain water quality. (11-1-89)

42. Revegetation. The establishment of the premining vegetation or a comparable vegetative cover on the land disturbed by surface mining operations. (11-1-89)

43. Ridge. A lengthened elevation of overburden. (11-1-89)

44. Road. A way constructed on a surface mine for the passage of vehicles, including the bed, slopes and shoulders thereof. (11-1-89)

45. Small Cyanidation Processing Facility. A cyanidation facility which chemically processes less than thirty-six thousand five hundred (36,500) tons of ore per year and no more than one hundred twenty thousand (120,000) tons of ore for the life of the project at any one (1) permitted cyanidation facility. No person or operator may concurrently hold more than one (1) small cyanidation processing facility permit, if located within ten (10) miles of each other. (3-30-06)

46. Surface Mine. An area where minerals are extracted by removing the overburden lying above and adjacent to natural deposits thereof and mining directly from the natural deposits thereby exposed. (11-1-89)

47. Surface Mining Operations. The activities performed on a surface mine in the extraction of minerals from the ground, including the excavation of pits, removal of minerals, disposal of overburden, and the construction of haulage roads, exclusive of exploration operations, except that any exploration operations which, exclusive of exploration roads, 1) result during a period of twelve (12) consecutive months in more than five (5) contiguous acres of newly affected land, or 2) which, exclusive of exploration roads, results during a period of twelve (12) consecutive months in newly affected lands consisting of more than ten (10) noncontiguous acres, if such affected land constitutes more than fifteen percent (15%) of the total area of any circular tract which includes such affected land, shall be deemed to be a surface mining operation for the purposes of the act. (11-1-89)

48. Surface Waters. The surface waters of the state of Idaho. (11-1-89)

49. Tailings Pond. An area on a surface mine enclosed by a man-made or natural dam onto which has been discharged the waste material resulting from the primary concentration of minerals in ore excavated from a surface mine. (11-1-89)

50. Treatment. With regard to cyanidation facilities, any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of a waste for the purpose of disposal. (3-30-06)

51. **Water Balance.** An inventory and accounting process capable of being reconciled that integrates all potential sources of water that are entrained in the cyanidation facility or may enter into or exit from the cyanidation facility. The inventory must include the water holding capacity of specific structures within the facility that contain process water. The water balance is used to ensure that all process water and other pollutants can be contained as engineered and designed within a factor of safety as determined in the permanent closure plan. (3-30-06)

52. **Water Management Plan.** A document that describes the results of the water balance and the methods that will be used to ensure that pollutants are not discharged from a cyanidation facility into waters of the state, unless permitted or otherwise approved by the DEQ. (3-30-06)

53. **Waters of the State.** All the accumulations of water, surface and underground, natural and artificial, public or private, or parts thereof which are wholly or partially within, which flow through or border upon the state. These waters shall not include municipal or industrial wastewater treatment or storage structures or private reservoirs, the operation of which has no effect on waters of the state. (3-30-06)

54. **Weak Acid Dissociable (~~WAD~~) Cyanide.** The cyanide concentration as determined by Method C, Weak Acid Dissociable Cyanide, D2036, the American Society of Testing Materials Book of Standards, "Standard Methods for the Examination of Water and Wastewater," Method 4500 CN⁻ I, or other methods accepted by the scientific community and deemed appropriate by the DEQ. (~~3-30-06~~)()

011. ABBREVIATIONS.

01. BMP. Best Management Practices. ()

02. DEQ. Department of Environmental Quality. ()

03. U.S.C. United States Code. ()

04. WAD. Weak Acid Dissociable. ()

~~0142~~ -- 049. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

060. EXPLORATION OPERATIONS AND REQUIRED RECLAMATION.

01. **Diligence.** All reclamation activities required to be conducted on exploration sites shall be performed in a good, workmanlike manner with all reasonable diligence, and as to a given exploration drill hole, road, or trench, within one (1) year after abandonment thereof. (11-1-89)

02. **When Exploration Is Surface Mining.** Exploration operations may under some circumstances constitute surface mining operations (see Subsection 010.46). (3-30-06)

03. **Notification.** Any operator desiring to conduct exploration using motorized earth-moving equipment to locate minerals for immediate or ultimate sale shall notify the Department ~~by certified mail~~ within seven (7) days after beginning exploration operations. (~~3-30-06~~)()

04. **Contents of Notification.** The notification shall include: (3-30-06)

a. The name and address of the operator; (11-1-89)

b. The legal description of the exploration and its starting and estimated completion date; and (3-30-06)

- c. The anticipated size of the exploration and the general method of operation. (3-30-06)
- 05. Confidentiality.** Any such notification shall be treated as confidential in accord with Section 180. (3-30-06)
- 06. Exploration Reclamation (Less Than Two Acres).** Every operator who conducts exploration affecting less than two (2) acres shall: (3-30-06)
- a. Wherever possible, contour the affected lands to their approximate previous contour; and (11-1-89)
- b. Conduct revegetation activities in accordance with Subsection 140.11. Unless otherwise required by a federal agency, one (1) pit or trench on a federal mining claim showing discovery, may be left open pending verification by federal mining examiners. (3-30-06)
- c. Abandoned exploration drill holes shall be plugged, or otherwise left so as to eliminate hazards to humans and animals. Pits or trenches on mining claims showing discovery may be left open pending verification by federal mining examiners but shall not create a hazard to humans or animals. Such abandoned pits and trenches shall be reclaimed within one (1) year of verification. (3-30-06)
- d. If water runoff from exploration causes siltation of surface waters in amounts more than normally results from runoff, the operator shall reclaim affected lands and adjoining lands under his control as is necessary to re-establish runoff conditions that existed prior to starting exploration, or as is necessary to meet state water quality standards, whichever is the lesser standard. It shall be presumed that state water quality standards will be the applicable standard unless baseline data is provided to rebut the presumption. (3-30-06)
- 07. Exploration Reclamation (More Than Two Acres).** Reclamation of lands where exploration has affected more than two (2) acres shall be completed as set forth in Subsection 060.06 and the following additional requirements: (3-30-06)
- a. Abandoned exploration roads shall be cross-ditched as necessary to minimize erosion. The director may request in writing, or may be petitioned in writing, that a given road or road segment be left for a specific purpose and not be cross-ditched or revegetated. If the director approves the petition, the operator cannot thereafter be required to conduct reclamation activities with respect to that given road or road segment. (3-30-06)
- b. Ridges of overburden shall be leveled so as to have a minimum width of ten (10) feet at the top. (11-1-89)
- c. Peaks of overburden shall be leveled so as to have a minimum width of fifteen (15) feet at the top. (11-1-89)
- d. Overburden piles shall be reasonably prepared to control erosion. (11-1-89)
- e. Abandoned lands affected by exploration shall be top-dressed to the extent that such overburden is reasonably available from any pit or other excavation created by the exploration, with that type of overburden that is conducive to the control of erosion or the growth of vegetation that the operator elects to plant thereon. (3-30-06)
- f. Any water containment structure created in connection with exploration, shall be reasonably prepared so as not to constitute a hazard to humans or animals. (3-30-06)
- 08. Additional Reclamation.** The operator and the director may agree, in writing, to complete additional reclamation beyond the requirements established in the chapter and these rules. (3-30-06)
- 061. -- 068. (RESERVED)**
- 069. APPLICATION PROCEDURE AND REQUIREMENTS FOR QUARRIES, DECORATIVE STONE, BUILDING STONE, AND AGGREGATE MATERIALS INCLUDING SAND, GRAVEL AND CRUSHED ROCK.**

01. Approval Required. Approval of a reclamation plan by the Department is required even if approval of such plan has been or will be obtained from a federal agency. (3-30-06)

02. No Operator Shall Conduct Surface Mining Operations. No operator shall conduct surface mining operations on any lands in the state until the surface mining reclamation plan has been approved by the director, and the operator has filed a bond that meets the requirements of the chapter and these rules. (3-30-06)

03. Application Package. The operator must submit ~~five (5)~~ a complete ~~copies of the~~ application package, for each separate surface mine or mine panel, before the reclamation plan will be approved. Separate surface mines are individual, physically disconnected operations. A complete application package consists of:

~~(3-30-06)~~()

a. An application provided by the director; (7-1-98)

b. A map or maps of the proposed mining operation which includes the information required under Subsection 069.03; (7-1-98)

c. A reclamation plan, in map and narrative form, which includes the information required under Subsection 069.04; and (3-30-06)

d. An out-of-state operator shall designate an in-state agent authorized to act on behalf of the operator. In case of an emergency that requires an action or actions to prevent environmental damage, both the operator and the authorized agent will be notified as well. (3-30-06)

04. Map Requirements. A vicinity map shall be prepared on standard United States Geological Survey ("USGS") seven and one-half (7.5) minute quadrangle maps or equivalent. A map of the proposed surface mining operation site shall be of sufficient scale to show: (3-30-06)

a. The location of existing roads, access, and main haul roads to be constructed or reconstructed in conjunction with the surface mining operation and the approximate dates for construction, reconstruction, and abandonment; (3-30-06)

b. The approximate location and names, if known, of drainages, streams, creeks, or water bodies within one thousand (1,000) feet of the surface mining operation; (3-30-06)

c. The approximate boundaries of the lands to be utilized in the surface mining operations, including a legal description to the quarter-quarter section; (3-30-06)

d. The approximate boundaries and acreage of the lands that will become affected land as a result of the surface mining operation during the first year of operations; (3-30-06)

e. The currently planned storage locations of fuel, equipment maintenance products, wastes, and chemicals that will be utilized in the surface mining operation; (3-30-06)

f. The currently planned location and configuration of pits, overburden piles, crusher reject materials, topsoil storage, wash plant ponds and sediment ponds that will be utilized; (3-30-06)

g. Scaled cross-sections by length and height showing surface profiles prior to mining; and (7-1-98)

h. A surface and mineral control or ownership map of appropriate scale for boundary identification; (7-1-98)

05. Reclamation Plan Requirements. Reclamation plans must be submitted in map and narrative form and include the following: (3-30-06)

a. Where surface waters are likely to be impacted and when requested by the director, documents

identifying and assessing foreseeable, site-specific nonpoint sources of water quality impacts upon adjacent surface waters and the BMPs the operator will use to control such impacts during surface mining and reclamation; (3-30-06)

- b.** Scaled cross-sections by length and height, showing planned surface profiles and slopes after reclamation; (3-30-06)
- c.** Roads to be reclaimed; (7-1-98)
- d.** A plan for revegetation of affected lands including soil types, slopes, precipitation, seed rates, species, handling of topsoil or other growth medium, time of planting, method of planting and, if necessary, fertilizer and mulching rates; (7-1-98)
- e.** The planned reclamation of wash plant or sediment ponds; (3-30-06)
- f.** A drainage control map which identifies the location of BMPs that will be implemented to control erosion and such nonpoint source water quality impacts during surface mining and reclamation activities; (3-30-06)
- g.** The location of any current 100-year floodplain in relation to the mining facilities if the floodplain is within 100 feet of the facilities, and the BMPs to be implemented that will keep surface waters from entering any pits and potentially changing course. ()

070. APPLICATION PROCEDURE AND REQUIREMENTS FOR OTHER SURFACE MINING OPERATIONS INCLUDING HARDROCK AND PHOSPHATE MINING.

01. Reclamation Plan Approval Required. Approval of a reclamation plan by the Department is required even if approval of such plan has been or will be obtained from a federal agency. No operator shall conduct surface mining operations on any lands in the state until the reclamation plan has been approved by the director, and the operator has filed the required performance bond. (3-30-06)

02. Application Package. The operator must submit ~~five (5)~~ a complete ~~copies of the~~ application package for each separate surface mine or mine panel before the reclamation plan will be approved. Separate surface mines are individual, physically disconnected operations. A complete application package consists of: ~~(3-30-06)~~()

- a.** All items and information required under Section 069 of these rules; (3-30-06)
- b.** Any additional information required by Subsection 070.04; and (3-30-06)
- c.** An operating plan, if required by Section 47-1506(b), Idaho Code, prepared in accordance with Subsections 070.05 and 070.06 of these rules. (3-30-06)

03. Map Requirements. Maps shall be prepared in accordance with Subsection 069.04 of these rules. (3-30-06)

04. Reclamation Plan Requirements. Reclamation plans must include all of the information required under Subsection 069.05 and the following additional information: (3-30-06)

- a.** A description of the planned reclamation of tailings or sediment ponds; and (3-30-06)
- b.** An estimate of total reclamation cost to be used in establishing bond amount. The cost estimate should include the approximate cost of grading, revegetation, equipment mobilization, labor, and other pertinent costs. (11-1-89)
- c.** A description of foreseeable, site-specific impacts from acid rock drainage and the BMPs that will be used to mitigate any impacts from such acid rock drainage. (3-30-06)
- d.** Other pertinent information the Department has determined is necessary to ensure that the operator

will comply with the requirements of the chapter. (3-30-06)

05. Operating Plan Requirements. A complete operating plan shall consist of: (3-30-06)

a. Maps showing: (3-30-06)

i. The location of existing roads and anticipated access and principal haul roads planned to be constructed for surface mining operations. (3-30-06)

ii. The boundaries and acreage of the affected lands. (3-30-06)

iii. The planned location of pits, mineral stockpiles, overburden piles and tailings ponds for the surface mining operation. (3-30-06)

iv. The location and, if known, the names of all streams, creeks, or water bodies within the area of the affected lands. (3-30-06)

v. The drainage adjacent to the area where the surface is being utilized by surface mining operations. (7-1-98)

vi. The approximate boundaries and acreage of the lands that will become affected during the first year of surface mining operations. (3-30-06)

b. Additional information regarding coarse and durable rock armor, if any, is proposed to be used for reclamation of mine facilities. The director may, after considering the type, size, and potential environmental impact of the facility, require the operator to include additional information in the operating plan. Such information may include, but is not limited to, one (1) or more of the following: (3-30-06)

i. A description of the quantities, size, geologic characteristics, and durability of the materials to be used for final reclamation and armoring. (3-30-06)

ii. A description of how the coarse and durable materials will be handled and/or stockpiled, including a schedule for such activities that will ensure adequate quantities are available during reclamation. (3-30-06)

c. The director may, after considering the type, size, and potential environmental impact of the facility, require the operator to prepare a geotechnical analysis and report, signed by an engineer registered in the state of Idaho, which shows that (1) any waste rock or overburden stockpiles, (2) any pit walls proposed to be more than one hundred (100) feet high, or (3) any pit walls where geologic conditions could lead to failure of the wall regardless of the height will be constructed in a manner that is consistent with industry standards to minimize the potential for failure. If failure of these structures can reasonably be expected to impact adjacent surface or ground waters or adjacent private or state-owned lands, the analysis may be required to consider the long-term stability of these structures, the potential for groundwater accumulation, and the expected seismic accelerations at the site. (3-30-06)

071. APPLICATION PROCEDURE AND REQUIREMENTS FOR PERMANENT CLOSURE OF CYANIDATION FACILITIES.

01. Permanent Closure Plan Approval Required. No operator shall construct or operate a new cyanidation facility or materially modify or materially expand an existing cyanidation facility prior to obtaining a permit, approval from the director and before the operator has filed a bond, as required by these rules. (3-30-06)

02. Permanent Closure Plan Requirements. A permanent closure plan shall: (3-30-06)

a. Identify the current owner of the cyanidation facility and the party responsible for the permanent closure and the long-term care and maintenance of the cyanidation facility; (3-30-06)

b. Include a timeline showing: (3-30-06)

- i. The schedule to complete permanent closure activities, including neutralization of process waters and material stabilization, and the time period for which the operator shall be responsible for post-closure activities; and (3-30-06)
- ii. If the operator plans to complete construction, operation, and/or permanent closure of the cyanidation facility in phases, the schedule to begin each phase of construction, operation, and/or permanent closure activities and any associated post-closure activities. (3-30-06)
- c. Provide the objectives, methods, and procedures that will achieve neutralization of process waters and material stabilization during the closure period and through post-closure; (3-30-06)
- d. Provide a water management plan from the time the cyanidation facility is in permanent closure through the defined post-closure period. The plan shall be prepared in accordance with IDAPA 58.01.13, "Rules for Ore Processing by Cyanidation," administered by the DEQ, as required to meet the objectives of the permanent closure plan. (3-30-06)
- e. Include the schematic drawings for all BMPs that will be used during the closure period, through the defined post-closure period, and a description of how the BMPs support the water management plan, and an explanation of the water conveyance systems that are planned for the cyanidation facility. (3-30-06)
- f. Provide proposed post-construction topographic maps and scaled cross-sections showing the configuration of the final heap or tailing facility, including the final cap and cover designs and the plan for long-term operation and maintenance of the cap. Caps and covers used as source control measures for cyanidation facilities must be designed to minimize the interaction of meteoric waters, surface waters, and groundwaters with wastes containing pollutants that are likely to be mobilized and discharged to waters of the state. Prior to approval of a permanent closure plan, engineering designs and specifications for caps and covers must be signed and stamped by a professional engineer registered in the state of Idaho; (3-30-06)
- g. Include monitoring plans for surface and ground water during closure and post-closure periods, adequate to demonstrate water quality trends and to ensure compliance with the stated permanent closure objectives and the requirements of the chapter; (3-30-06)
- h. Provide an assessment of the potential impacts to soils, vegetation, and surface and ground waters for all areas to be used for the land application system and provide a mitigation plan, as appropriate. (3-30-06)
- i. Provide information on how the operator will comply with the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; Idaho Hazardous Waste Management Act, Chapter 44, Title 39, Idaho Code; Idaho Solid Waste Management Act, Chapter 74, Title 39, Idaho Code; and appropriate state rules, during operation and permanent closure; (3-30-06)
- j. Provide sufficient detail to allow the operator to prepare an estimate of the reasonable costs to implement the permanent closure plan; (3-30-06)
- k. Provide an estimate of the reasonable estimated costs to complete the permanent closure activities specified in the permanent closure plan in the event the operator fails to complete those activities. The estimate shall: (3-30-06)
- i. Identify the incremental costs of attaining critical phases of the permanent closure plan and a proposed bond release schedule; (3-30-06)
- ii. Assume that permanent closure activities will be completed by a third party whose services are contracted for by the Board as a result of a bond forfeiture under Section 47-1513, Idaho Code, and include: (3-30-06)
- (1) All direct and indirect costs expected to be incurred by a third party including, but not limited to, mobilization, labor, materials, equipment, engineering, and demobilization costs; and (3-30-06)

(2) An amount acceptable to the Department but not to exceed ten percent (10%) of the total estimated closure costs, which is intended to cover costs the Department will incur in association with contract administration. (3-30-06)

l. If the proposal is to complete cyanidation facility construction, operation, and/or permanent closure activities in phases: (3-30-06)

i. Describe how these activities will be phased and how, after the first phase of activities, each subsequent phase will be distinguished from the previous phase or phases; and (3-30-06)

ii. Describe how any required post-closure activities will be addressed during and after each subsequent phase has begun. (3-30-06)

m. Provide any additional information that may be required by the Department to ensure compliance with the objectives of the permanent closure plan and the requirements of the chapter. (3-30-06)

03. Preapplication Conference. Prospective applicants are encouraged to meet with the Department well in advance of preparing and submitting an application package to discuss the anticipated application requirements and application procedures, and to arrange for a visit or visits to the proposed location of the cyanidation facility. The preapplication conference may trigger a period of collaborative effort between the Department, the DEQ, and the applicant in developing checklists to be used by the agencies in reviewing an application for completion, accuracy, and protectiveness. (3-30-06)

04. Application Package for Permanent Closure. An application and its contents submitted to the Department shall be used to determine whether an applicant can complete all permanent closure activities in conformance with all applicable state laws. An application must provide information in sufficient detail to allow the director to make necessary application review decisions regarding cyanidation facility closure and protection of public health, safety, and welfare, in accordance with the chapter. ~~Five (5) copies of the A complete~~ application package must be submitted to the Department. A complete application package for an operator proposing to use cyanidation shall consist of: ~~(3-30-06)~~()

a. A Department application form completed, signed, and dated by the applicant. This form shall contain the following information: (3-30-06)

i. Name, location, and mailing address of the cyanidation facility; (3-30-06)

ii. Name, mailing address, and phone number of the operator. An out-of-state operator shall designate an in-state agent authorized to act on his behalf. In case of an emergency that requires actions to prevent environmental damage, both the operator and his agent will be notified; (3-30-06)

iii. Land ownership status (federal, state, private or public); (3-30-06)

iv. The legal description to the quarter-quarter section of the location of the proposed cyanidation facility; and (3-30-06)

v. The legal structure (corporation, partnership, etc.) and primary place of business of the operator. (3-30-06)

b. Evidence that the applicant is authorized by the Secretary of State to conduct business in the state of Idaho; (3-30-06)

c. A permanent closure plan as prescribed in Subsection 071.02; (3-30-06)

d. The DEQ application and supporting materials; (3-30-06)

e. The five thousand dollar (\$5,000) application processing and review fee, as defined in Subsection 071.05.a. (3-30-06)

- 05. Application Fee.** The application fee shall consist of two (2) parts: (3-30-06)
- a.** Processing and review fee. (3-30-06)
- i. The applicant shall pay a nonrefundable five thousand dollar (\$5,000) fee upon submission of an application. Within thirty (30) days of receiving an application and this fee, the director shall provide a detailed cost estimate to the operator which includes a description of the scope of the Department's review; the assumptions on which the Department's estimate is based; and an itemized accounting of the anticipated number of labor hours, hourly labor rates, travel expenses and any other direct expenses the Department expects to incur, and indirect expenses equal to ten percent (10%) of the Department's estimated direct costs, as required to satisfy its statutory obligation pursuant to the chapter. (3-30-06)
- ii. If the Department's estimate is greater than five thousand dollars (\$5,000), the applicant may agree to pay a fee equal to the difference between five thousand dollars (\$5,000) and the Department's estimate, or may commence negotiations with the Department to establish a reasonable fee. (3-30-06)
- iii. If, within twenty (20) days from issuance of the Department's estimate, the Department and applicant cannot agree on a reasonable application processing and review fee, the applicant may appeal to the Board. The Board shall: (3-30-06)
- (1) Review the Department's estimate; (3-30-06)
- (2) Conduct a hearing where the applicant is allowed to give testimony to the Board concerning the Department's estimate; and (3-30-06)
- (3) Establish the amount of the application review and processing fee. (3-30-06)
- iv. If the fee is more than five thousand dollars (\$5,000), the applicant shall pay the balance of the fee within fifteen (15) days of the Board's decision or withdraw the application. (3-30-06)
- v. Nothing in this section shall extend the time in which the Board must act on a plan submitted. (3-30-06)
- b.** Permanent closure cost estimate verification fee. (3-30-06)
- i. Pursuant to Sections 47-1506(g) and 47-1513(j), Idaho Code, the Department may employ a qualified independent party, acceptable to the operator and the Board, to verify the accuracy of the permanent closure cost estimate. (3-30-06)
- ii. The applicant shall be solely responsible for paying the Department's cost to employ a qualified independent party to verify the accuracy of the permanent closure cost estimate. The applicant may participate in the Department's processes for identifying qualified parties and selecting a party to perform this work. (3-30-06)
- iii. If a federal agency has responsibility to establish the bond amount for permanent closure of a cyanidation facility on federal land, the Department may employ the firm retained by the federal agency to verify the accuracy of the permanent closure cost estimate. If the director chooses not to employ the firm retained by the federal agency, he shall provide a written justification explaining why the firm was not employed. (3-30-06)

(BREAK IN CONTINUITY OF SECTIONS)

120. PERFORMANCE BOND REQUIREMENTS FOR SURFACE MINING.

01. Submittal of Bond Before Surface Mining. Prior to beginning any surface mining on a mine panel covered by a plan, an operator shall submit to the director, on a surface mining reclamation bond form, a

performance bond meeting the requirements of this rule. The amount shall be the amount necessary to pay the estimated reasonable costs of reclamation required under the reclamation plan for each acre of land to be affected during the first year of operation, plus ten (10%) percent. No performance bond shall exceed ~~two~~ fifteen thousand ~~five~~ hundred dollars (\$~~2,500~~15,000) for a given acre of affected land unless: (3-30-06)()

a. The Board has determined that such performance bond is necessary to meet the requirements of Sections 47-1506, 47-1509, 47-1510, and 47-1511, Idaho Code. (3-30-06)

b. The Board has delivered to the operator, in writing, a notice setting forth the reasons it believes such bond is necessary. (7-1-98)

c. The Board has conducted a hearing where the operator is allowed to give testimony to the Board concerning the amount of the proposed bond, as provided by Section 47-1512(c), Idaho Code. This requirement for a hearing may be waived, in writing, by the operator. (3-30-06)

02. Mining Operation Conducted by Public or Government. Notwithstanding any other provision of law to the contrary, the bonding provisions of the chapter and these rules shall not apply to any surface mining operations conducted by a public or governmental agency for maintenance, repair, or construction of a public highway. (3-30-06)

~~**03. Limits.** Only surface mining reclamation bonds obtained after January 1, 1997, may be assessed at actual costs plus ten percent (10%), not to exceed two thousand five hundred dollars (\$2,500) per acre except as provided by the chapter, or if a material change as defined by Subsection 010.20 of these rules. Any revision to the amount, term and conditions of a performance bond due to a material change shall apply only to the affected lands covered by the material change. (3-30-06)~~

~~**04. Annual Bond Review.** At the beginning of each calendar year, the operator shall notify the director of any increase in the acreage of affected land which will result from planned surface mining activity within the next twelve (12) months. A commensurate increase in the bond will be required for an increase in affected acreage. Any additional bond required shall be submitted on the appropriate bond form within ninety (90) days of operator's receipt of notice from the Department that an additional bond amount is required. In no event shall surface mining operations be conducted that would affect additional acreage until the appropriate bond form and bond has been with the Department. Acreage on which reclamation is complete shall be reported in accordance with Subsection 120.07 and after release of this acreage from the plan by the director, the bond may be reduced by the amount appropriate to reflect the completed reclamation. (3-30-06)~~

~~**054. Bond Provided to the Federal Government.** Any bond provided to the federal government that also meets the requirements of Section 120 shall be sufficient for the purposes of these rules. (3-30-06)~~

~~**065. Bond Reduction.** (11-1-89)~~

a. Upon finding that any land bonded under a reclamation plan will not be affected by mining, the operator shall notify the director. The amount of the bond shall be reduced by the amount being held to reclaim those lands. (11-1-89)

b. Any request for bond reduction shall be answered by the director within thirty (30) days of receiving such request unless weather conditions prevent inspection. (11-1-89)

~~**076. Bond Release.** Upon completion of the reclamation specified in the plan, the operator shall notify the director of his desire to secure release from bonding. When the director has verified that the requirements of the reclamation plan have been met as stated in the plan, the bond shall be released. (11-1-89)~~

a. Any request for bond release shall be answered by the director within thirty (30) days of receiving such request unless weather conditions prevent inspection. (11-1-89)

b. If the director finds that a specific portion of the reclamation has been satisfactorily completed, the bond may be reduced to the amount required to complete the remaining reclamation. The following schedule will be

used to complete these bond reductions unless the director determines in a specific case that this schedule is not appropriate and specifies a different schedule: (11-1-89)

i. Sixty percent (60%) of the bond may be released when the operator completes the required backfilling, regrading, topsoil replacement, and drainage control of the bonded area in accordance with the approved reclamation plan; and (11-1-89)

ii. After revegetation activities have been performed by the operator on the regraded lands, according to the approved reclamation plan, the Department may release an additional twenty-five percent (25%) of the bond. (11-1-89)

c. The remaining bond shall not be released: (11-1-89)

i. As long as the affected lands are contributing suspended solids to surface waters outside the affected area in excess of state water quality standards and in greater quantities than existed prior to the commencement of surface mining operations; (11-1-89)

ii. Until final removal of equipment and structures related to the mining activity or until any remaining equipment and structures are brought under an approved reclamation plan and bond by a new operator; and (11-1-89)

iii. Until all temporary sediment or erosion control structures have been removed and reclaimed or until such structures are brought under an approved reclamation plan and bond by a new operator. (11-1-89)

087. Cooperative Agreements. The director may through private conference, conciliation, and persuasion reach a cooperative agreement with the operator to correct deficiencies in complying with the reclamation plan and thereby postpone action to forfeit the bond and cancel the reclamation plan if all deficiencies are satisfactorily corrected within the time specified by the cooperative agreement. (11-1-89)

098. Bonding Rate. An operator may petition the director for a change in the initial bond rate. The director will review the petition, and if satisfied with the information presented, a special bond rate will be set based upon the estimated cost that the director would incur should a forfeiture of bond occur and it became necessary for the director, through contracting with a third party, to complete reclamation to the standards established in the plan. (11-1-89)

109. Liabilities for Unbonded Reclamation Costs. An operator who: (11-1-89)

a. Departs from his approved reclamation plan by performing an act or omission and such deviation is not subsequently approved; (11-1-89)

b. Does not furnish a bond required by these rules; and (11-1-89)

c. Is not required to furnish a bond by these rules, but fails to reclaim; is in violation of these rules and may be subject to civil penalty under Section 47-1513(c), Idaho Code. The amount of civil penalty shall be the estimated cost of reasonable reclamation of affected lands as determined by the director. Reasonable reclamation of the site shall be presumed to be in accordance with the standards established in the approved reclamation plan. The amount of the civil penalty shall be in addition to those described in Subsection 160.06. (11-1-89)

(BREAK IN CONTINUITY OF SECTIONS)

140. BEST MANAGEMENT PRACTICES AND RECLAMATION FOR SURFACE MINING OPERATION AND PERMANENT CLOSURE OF CYANIDATION FACILITIES.

Enumeration of a practice or act in Section 140 shall not be construed to require its specific inclusion in a reclamation or permanent closure plan. (3-30-06)

01. Nonpoint Source Control. (3-30-06)

a. Appropriate BMPs for nonpoint source controls shall be designed, constructed, and maintained with respect to site-specific surface mining operations or permanent closure activities. Operators shall utilize BMPs designed to achieve state water quality standards and to protect existing beneficial uses of adjacent waters of the state, but shall not be required to do more than is necessary to preserve the condition of runoff from the affected land or the cyanidation facility prior to conducting any exploration, surface mining or cyanidation facility operations. These measures shall be among the first to be taken, if necessary, to protect water quality. State water quality standards, including protection of existing beneficial uses, shall be the standard that must be achieved by BMPs unless the operator can show, and the director determines, that a lesser standard existed in the area to be affected prior to the commencement of the subject surface mining or exploration operations. (3-30-06)

b. If the BMPs utilized by the operator do not result in compliance with Subsection 140.01.a., the director shall require the operator to modify or improve such BMPs to meet the controlling, water quality standards as set forth in current laws, rules, and regulations. (~~3-30-06~~)()

02. Sediment Control. In addition to proper mining techniques and reclamation measures, the operator shall take necessary steps at the close of each operating season to assure that sediment movement associated with surface runoff over the area is minimized in order to achieve water quality standards, or to preserve the condition of water runoff from the mined area prior to commencement of the subject surface mining or exploration operations, whichever is the lesser standard. Sediment control measures refer to best management practices carried out within and, if necessary, adjacent to the disturbed area and consist of utilization of proper mining and reclamation measures, as well as specific necessary sediment control methods, separately or in combination. Specific sediment control methods may include, but are not limited to: (3-30-06)

- a.** Keeping the disturbed area to a minimum at any given time through progressive reclamation; (3-30-06)
- b.** Shaping waste to help reduce the rate and volume of water runoff by increasing infiltration; (3-30-06)
- c.** Retaining sediment within the disturbed area; (3-30-06)
- d.** Diverting surface runoff around the disturbed area; (3-30-06)
- e.** Routing runoff through the disturbed area using protected channels or pipes so as not to increase sediment load; (3-30-06)
- f.** Use of riprap, straw dikes, check dams, mulches, temporary vegetation, or other measures to reduce overland flow velocities, reduce runoff volume, or retain sediment; and (3-30-06)
- g.** Use of adequate sediment ponds, with or without chemical treatment. (3-30-06)

03. Clearing and Grubbing. Clearing and grubbing of land in preparation for mining exposes mineral soil to the erosive effects of moving water. Operators are cautioned to keep such areas as small as possible (preferably no more than one (1) year's mining activity) as the operator shall be required to meet the applicable surface water quality standards on all such areas. Where practicable, trees and slash should be stockpiled for use in seedbed protection and erosion control. (3-30-06)

04. Overburden/Topsoil. To aid in the revegetation of affected lands where surface mining operations result in the removal of substantial amounts of overburden including any topsoil, the operator should remove the available topsoil or other growth medium as a separate operation for such area. Unless there are previously affected lands which are graded and immediately available for placement of the newly removed topsoil or other growth medium, the topsoil or other growth medium shall be stockpiled and protected from erosion and contamination until such areas become available. (3-30-06)

- a.** Overburden/Topsoil Removal. (11-1-89)

i. Any overburden/topsoil to be removed should be removed prior to any other mining activity to prevent loss or contamination; (11-1-89)

ii. Where overburden/topsoil removal exposes land area to potential erosion, the director, under the reclamation plan, may require BMPs necessary to prevent violation of water quality standards; and (3-30-06)

iii. Where the operator can show that an overburden material other than topsoil is conducive to plant growth, or where overburden other than topsoil is the only material reasonably available, such overburden may be allowed as a substitute for or a supplement to the available topsoil. (3-30-06)

b. Topsoil Storage. Topsoil stockpiles shall be placed to minimize rehandling and exposure to excessive wind and water erosion. Topsoil stockpiles shall be protected as necessary from erosion by use of temporary vegetation or by other methods which will control erosion, including, but not limited to, silt fences, chemical binders, seeding, and mulching. (11-1-89)

c. Overburden Storage. Stockpiled ridges of overburden shall be leveled in such a manner as to have a minimum width of ten (10) feet at the top. Peaks of overburden shall be leveled in such a manner as to have a minimum width of fifteen (15) feet at the top. The overburden piles shall be reasonably prepared to control erosion using best management practices; such activities may include terracing, silt fences, chemical binders, seeding, mulching or slope reduction. (7-1-98)

d. Topsoil Placement. Abandoned affected lands shall be covered with topsoil or other type of overburden that is conducive to plant growth, to the extent such materials are readily available, in order to achieve a stable uniform thickness. Excessive compaction of overburden and topsoil is to be avoided. Topsoil redistribution shall be timed so that seeding, or other protective measures, can be readily applied to prevent compaction and erosion. (3-30-06)

e. Fill. Backfill and fill materials should be compacted in a manner to ensure stability. (3-30-06)

05. Roads. (11-1-89)

a. Roads shall be constructed to minimize soil erosion, which may require restrictions on the length and grade of the roadbed, surfacing of roads with durable non-toxic material, stabilization of cut and fill slopes, and other techniques designed to control erosion. (3-30-06)

b. All access and haul roads shall be adequately drained. Drainage structures may include, but are not limited to, properly installed ditches, water-bars, cross drains, culverts, and sediment traps. (11-1-89)

c. Culverts that are to be maintained for more than one (1) year shall be designed to pass peak flows from not less than a twenty (20) year, twenty-four (24) hour precipitation event and have a minimum diameter of eighteen (18) inches. (11-1-89)

d. Roads and water control structures shall be maintained at periodic intervals as needed. Water control structures serving to drain roads shall not be blocked or restricted in any manner to impede drainage or significantly alter the intended purpose of the structure. (11-1-89)

e. Roads that will not be recontoured to approximate original contours upon abandonment shall be cross-ditched and revegetated, as necessary, to control erosion. (3-30-06)

f. Roads that are not abandoned and continue to be used under the jurisdiction of a governmental or private landowner, shall comply with the nonpoint source sediment control provisions of Subsection 140.02 until the successor assumes control. (3-30-06)

06. Backfilling and Grading. (11-1-89)

a. Every operator who conducts surface mining or cyanidation facility operations which disturb less

than two (2) acres shall, where possible, contour the disturbed land to its approximate previous contour. These lands shall be revegetated in accordance with Subsection 140.11. (3-30-06)

b. An operator who conducts surface mining or cyanidation facility operations which disturb two (2) acres or more shall reduce all waste piles and depressions to the lowest practicable grade. This grade shall not exceed the angle of repose or maximum slope of natural stability for such waste or generate erosion in which sediment enters waters of the state. (3-30-06)

c. Backfill and fill materials should be compacted in a manner to ensure mass and surface stability. (7-1-98)

d. After the disturbed area has been graded, slopes will be measured for consistency with the approved reclamation plan or the permanent closure plan. (3-30-06)

07. Disposal of Waste in Areas Other Than Mine Excavation. Waste material not used to backfill mined areas shall be transported and placed in a manner designed to stabilize the waste piles and control erosion. (3-30-06)

a. The available disposal area should be on a moderately sloped, naturally stable area. The site should be near the head of a drainage to reduce the area of watershed above the fill. (11-1-89)

b. All surface water flows within the disposal area shall be diverted and drained using accepted engineering practices such as a system of French drains, to keep water from entering the waste pile. These measures shall be implemented in accordance with standards prescribed by the Idaho Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code, and the Idaho Dam Safety Act, Sections 42-1710 through 42-1721, Idaho Code, if applicable. (11-1-89)

c. The waste material not used in backfilling mined areas should be compacted, where practical, and should be covered and graded to allow surface drainage and ensure long-term stability. (11-1-89)

d. The operator may, if appropriate, use terraces or slope reduction to stabilize the face of any fill. Slopes of the fill material should not exceed angle of repose or generate erosion in which sediment enters waters of the state. (3-30-06)

e. Unless adequate drainage is provided through a fill area, all surface water above the fill shall be diverted away from the fill area into protected channels, and drainage shall not be directed over the unprotected face of the fill. (11-1-89)

f. The operator shall conduct revegetation activities with respect to such waste piles in accordance with Subsection 140.11. (3-30-06)

08. Settling Ponds; Minimum Criteria. (11-1-89)

a. Sediment Storage Volume. Settling ponds shall provide adequate sediment storage capacity to achieve compliance with applicable water quality standards and protect existing beneficial uses, and may require periodic cleaning and proper disposal of sediment. (11-1-89)

b. Water Detention Time. Settling ponds shall have an adequate theoretical detention time for water inflow and runoff entering the pond, but theoretical detention time may be reduced by improvements in pond design, chemical treatment, or other methods. (11-1-89)

c. Emergency Spillway. In addition to the sediment storage volume and water detention time, settling ponds shall be designed to withstand and release storm flows as required by the Idaho Dam Safety Act, Section 42-1710 through 42-1721, Idaho Code, and Safety of Dams Rules, where applicable. (11-1-89)

09. Tailings Impoundments. All tailings, dams, or other types of tailings impoundments shall be designed, constructed, operated, and decommissioned so that upon their abandonment, the dam and impoundment

area will not constitute a hazard to human or animal life. (11-1-89)

a. Design criteria, construction techniques, and decommission techniques for tailings dams and impoundments shall comply with the Idaho Dam Safety Act, Sections 42-1710 through 42-1721, Idaho Code, and applicable rules and regulations. (11-1-89)

b. Topsoil shall be removed from the area to be affected by the impounding structure and tailings reservoir in accordance with Subsection 140.04. (3-30-06)

c. Abandonment and Decommissioning of Tailings Impoundments. (3-30-06)

i. Dewatering. Tailings ponds shall be dewatered to the extent necessary to provide an adequate foundation for the approved post-mining use. (3-30-06)

ii. Control of surface waters. Surface waters shall either be channeled around the reservoir and impoundment structure or through the reservoir and breached structure. Permanent civil structures shall be designed and constructed to implement either method of channeling. The structure shall provide for erosion-free passage of waters and adequate energy dissipation prior to entry into the natural drainage below the impounding structure. (3-30-06)

iii. Detoxification. Hazardous chemical residues within the tailings pond shall be detoxified or covered with an adequate thickness of non-toxic material, to the extent necessary to achieve water quality standards in adjacent surface waters. (3-30-06)

iv. Reclamation. After implementing the required dewatering, detoxification, and surface drainage control measures, the reservoir and impounding structure shall be covered with topsoil or other material conducive to plant growth, in accordance with Subsection 140.04. Where such soils are limited in quantity or not available, and upon approval by the Department, physical or chemical methods for erosion control may be used. All such areas are to be revegetated in accordance with Subsection 140.11, unless specified otherwise. (3-30-06)

d. When the operator requests termination of its reclamation or permanent closure plan, pursuant to Section 150 of these rules, impoundment structures and any reservoirs retained as fresh water reservoirs after final reclamation or permanent closure shall be required to conform with the Idaho Dam Safety Act, Sections 42-1710 through 42-1721, Idaho Code, if applicable. (3-30-06)

10. Permanent Cessation and Time Limits for Planting. (11-1-89)

a. Seeding and planting of affected lands and/or a permanently closed cyanidation facility should be conducted during the first normal period for favorable planting conditions after final seedbed preparation. (3-30-06)

b. Reclamation activities, where possible, are encouraged to be concurrent with the mining operation and may be included in the approved reclamation plan. Final reclamation shall begin within one (1) year after the surface mining operations have permanently ceased on a mine panel. If the operator permanently ceases disposing of overburden on a waste area or permanently ceases removing minerals from a pit or permanently ceases using a road or other affected land, the reclamation activity on each given area shall start within one (1) year of such cessation, despite the fact that all operations as to the mine panel, which included such pit, road, overburden pile, or other affected land, has not permanently ceased. (11-1-89)

c. An operator shall be presumed to have permanently ceased surface mining operations on a given portion of affected land when no substantial amount of mineral or overburden material has been removed or overburden placed on an overburden dump, or no significant use has been made of a road during the prior three (3) years. If an operator does not plan to use an affected area for three (3) or more years but intends thereafter to use the affected area for surface mining operations and desires to defer final reclamation until after its subsequent use, the operator shall submit a notice of intent and request for deferral of reclamation to the director, in writing. If the director determines that the operator plans to continue the operation within a reasonable period of time, the director shall notify the operator and may require actions to be taken to reduce degradation of surface resources until operations resume. If the director determines that use of the affected land for surface mining operations will not be

continued within a reasonable period of time, the director shall proceed as though the surface mining operation has been abandoned, but the operator shall be notified of such decision at least thirty (30) days before taking any formal administrative action. (11-1-89)

11. Revegetation Activities. (11-1-89)

a. The operator shall select and establish plant species that can be expected to result in vegetation comparable to that growing on the affected lands or on a closed cyanidation facility prior to surface mining or cyanidation facility operations, respectively. Certified weed free seed should be used in revegetation. The operator may use available technical data and results of field tests for selecting seeding practices and soil amendments which will result in viable revegetation. These practices of selection may be included in an approved reclamation plan or permanent closure. (3-30-06)

b. Unless otherwise specified in the approved reclamation or permanent closure plan, the success of revegetation efforts shall be measured against the existing vegetation on site prior to the surface mining or cyanidation facility operation, or against an adjacent reference area supporting similar types of vegetation. (3-30-06)

i. The ground cover of living plants on the revegetated area should be comparable to the ground cover of living plants on the adjacent reference area for two (2) full growing seasons after cessation of soil amendment or irrigation. (11-1-89)

ii. For purposes of this rule, ground cover shall be considered comparable if it has, on the area actually planted at least seventy percent (70%) of the premining ground cover for the mined area or adjacent reference area; (11-1-89)

iii. For locations with an average annual precipitation of more than twenty-six (26) inches, the director, in approving a reclamation or permanent closure plan, may set a minimum standard for success of revegetation as follows: Vegetative cover of seventy percent (70%) for two (2) full growing seasons in areas planted to herbaceous species only; or fifty percent (50%) vegetative cover for two (2) full growing seasons and six hundred (600) woody plants per acre in areas planted to a mixture of herbaceous and woody species. (3-30-06)

iv. As used in this section, “herbaceous species” means grasses, legumes, and other forbs; “woody plants” means woody shrubs, trees, and vines; and “ground cover” means the area of the ground surface covered by the combined aerial parts of vegetation and the litter that is produced naturally on-site, expressed as a percentage of the total area measured. Rock surface areas will be excluded from this calculation. (11-1-89)

v. For previously mined areas that were not reclaimed to the standards required by Section 140, and which are affected by the surface mining or cyanidation facility operations, vegetation should be established to the extent necessary to control erosion, but shall not be less than that which existed before redisturbance; and (3-30-06)

vi. Vegetative cover shall not be less than that required to control erosion. (11-1-89)

c. Introduced species may be planted if they are known to be comparable to previous vegetation, or if known to be of equal or superior use for the approved post-mining use of the affected land, or, if necessary, to achieve a quick, temporary cover for soil stabilization purposes. Species classified as poisonous or noxious weed species shall not be used in revegetation. (11-1-89)

d. By mutual agreement of the director, the landowner, and the operator, a site may be converted to a different, more desirable or more economically suitable habitat. (3-30-06)

e. Planting of grasses and forbs should be done in a manner which promotes rapid stabilization of the soil surface. Wherever terrain permits, grasses and forbs should be drilled or compacted into the ground using agricultural grass planting equipment or other seeders specifically designed for mine revegetation applications. Broadcast and hydroseeding may be used on areas where other methods are impractical or unavailable. (11-1-89)

f. The operator should plant shrubs or shrub seed, as required, where shrub communities existed prior to mining. Shrub seed may be planted as a portion of a grass seed mix or planted as bare-root transplants after grass

seeding. Where the landowner desires a specific land use such as grazing or cropland, shrubs will not be required in the revegetation species mix. Shrub lands undergoing revegetation with shrubs shall be protected from erosion by vegetation, chemical, or other acceptable means during establishment of the shrubs. (11-1-89)

- g.** Reforestation. Tree stocking of forestlands should meet the following criteria: (3-30-06)

 - i. Trees that are adapted to the site should be planted on the area to be revegetated in a density which can be expected over time to yield a timber stand comparable to premining timber stands; (11-1-89)
 - ii. Trees shall be established for two (2) full growing seasons after cessation of any soil amendments and irrigation before they are considered to be established; and (11-1-89)
 - iii. Forestlands undergoing revegetation with trees should be protected from erosion by vegetation, chemical binders, or other acceptable means during seedling establishment. (11-1-89)
- h.** Revegetation is not required on the following areas: (11-1-89)

 - i. Affected lands, or portions thereof, where planting is not practicable or reasonable because the soil is composed of excessive amounts of sand, gravel, shale, stone, or other material to such an extent to prohibit plant growth; (11-1-89)
 - ii. Any mined area or overburden stockpiles proposed to be used in the mining operations for haulage roads, so long as those roads are not abandoned; (3-30-06)
 - iii. Any mined area or overburden stockpile, where lakes are formed by rainfall or drainage runoff from adjoining lands; (3-30-06)
 - iv. Any mineral stockpile; (11-1-89)
 - v. Any exploration trench which will become a part of a pit or an overburden disposal area; and (3-30-06)
 - vi. Any road which is to be used in mining operations, so long as the road is not abandoned. (11-1-89)
 - i.** Mulching. Mulch should be used on severe sites and may be required by the reclamation or permanent closure plan where slopes are steeper than three to one (3:1) or the mean annual rainfall is less than twelve (12) inches. When used, straw or hay mulch should be obtained from certified weed free sources. "Mulch" means vegetation residues or other suitable materials to aid in the stabilization of soil and soil moisture conservation which will provide a micro-climate more suitable for germination and growth on severe sites. Annual grains such as rye, oats, and wheat may be used as a substitute for mulch where they will provide adequate protection and will be replaced by permanent species within a reasonable length of time. (3-30-06)

12. Petroleum-Based Products and Chemicals. All refuse, chemical and petroleum products and equipment should be stored and maintained in a designated location away from surface water and disposed of in such a manner as to prevent their entry into a waterway. (3-30-06)