



Senate Resources and Environment Committee

IDAPA 20.03.02 – Rules Governing Exploration, Surface Mining, and

Closure of Cyanidation Facilities

February 6, 2019

Mr. Chairman and members of the Committee, my name is Todd Drage, and I'm the Regulatory Minerals Program Manager at the Idaho Department of Lands. Thank you for the opportunity to appear before you today to testify. I'm here to present the pending rule docket number 20-0302-1801 found in your 2019 Pending Rules Review book, starting on page 88. The Department is seeking your approval of this pending rule.

This rule falls under Idaho's Surface Mining Act as defined in Title 47 Chapter 15 of Idaho Code. Today, I'll provide a brief overview of the Surface Mining Act and the reasons for pursuing rule changes. I'll then talk about the negotiated rulemaking the Department carried out in 2018 before summarizing these pending rule changes for your consideration.

The Surface Mining Act was designed to require reclamation of affected lands and to return them to a productive condition. In Idaho, minerals mined by surface mining methods include decorative stone, sand and gravel, phosphate, molybdenum, gold, silver, and others. The Department is responsible for providing regulatory oversight of surface mining activities on all state, federal, and private lands in Idaho.

The Department entered negotiated rulemaking to allow potential operators to submit notices electronically. Currently, when a potential operator wants to conduct exploration, the rules require notices be sent to the Department via certified mail. If an operator wants to actively mine, the rules require that applications are submitted to the Department with five copies of their Reclamation or Permanent Closure Plan. These are requirements that today seem burdensome and unnecessary. Further, the department is implementing a new system that will allow operators to submit documents online. We believe this will be more convenient for everyone but requires a change to the rules.

Another reason to enter negotiated rulemaking was to address the potential impacts of surface mining on adjacent surface waters. The 2017 floods illustrated a need for some clarification and proactive measures at some mine sites.

Prior to holding any negotiated rulemaking meetings, IDL first conducted outreach with current permittees and other parties and agencies with known interest in IDL's surface mining program. We sent out a mailer with the draft rule changes and directed them to IDL's website for more specific information and details on upcoming negotiated rulemaking meetings.



The Department then held three negotiated rulemaking meetings in Coeur d'Alene, Pocatello, and Boise in June of 2018. No comments were provided at the meetings, and no written comments were received at any point during the rulemaking. We also held a public hearing in Boise on September 20th, and no testimony was given.

For these rule changes, I'd like to provide a summary of the content of the changes in the pending rule.

- The primary change to these rules is to allow for electronic submittal of documents and applications. Operators will be able to submit documents in paper or electronically.
- Changes were made to incorporate required standard rule sections as outlined in the Administrative Procedures Act.
- Language was added so that new plans will show 100-year floodplains within 100 feet of their facilities and the best management practices that will be used to keep surface waters from entering their pit.
- To better align with statute, a couple of changes were made in regard to reclamation bonding. The first is raising the soft ceiling for bonding rates to \$15,000 per acre in conformance with what is currently in Title 47, Chapter 15, Idaho Code. The other change is to delete a subsection that restricted how reclamation costs are assessed. This section is out of date and redundant with Idaho Code, Section 47-1513(h).
- And, finally, the word "standards" was added to clarify water quality requirements for best management practices.

Once again, no comments were received during the negotiated rulemaking process or during the public hearing, and we do not believe any outstanding issues exist.

The Department requests approval of this pending rule. Thank you again for the opportunity to provide testimony. I will stand for any questions.