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July 23, 2025

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RE: Public Comment on Proposed Rule – Cyanidation: Docket No. 58-0113-2501

To Whom it May Concern:

Thank you for the opportunity to comment on the proposed cyanidation rules for IDAPA 58-0113-2501. The Idaho Mining Association (IMA) and its members are highly interested in the rules being revised to meet the intent of Senate Bill 1170 (S1170) as required in Chapter 1 Title 39-118A (33)(a)¹ Idaho Code. S1170 was designed to streamline the permitting process by clarifying the needs of the cyanidation facility permit application and the review and approval requirements conducted by the Department.

IMA considers specific sections of S1170 to be the most critical for defining the rule. Building upon the proposed rule, below are additions to support clarity and efficiency of implementation:

- Section 2 (1)(n) "Procedural completeness" means that the permit application and its contents **contain the required information, supporting plans, and documentation** to allow the progression of the application to the technical completeness review.
- Section 2 (1)(o) "Technical completeness" means that the permit application and its contents contain designs, specifications, supporting plans, and documentation that comply with the provisions of this section to **contain, control, and treat cyanidation process water, spent ore, tailings, and other material from the cyanidation process by having adequate containment through the use of liners, barriers, structures, or other measures to prevent discharge of cyanidation pollutants into the environment** that would impair beneficial use of waters of the state or would degrade waters of the state. For technical completeness, containment means:
- Section 2 (1)(o)(i) **Secondary containment for process equipment, tanks, and piping; and**
- Section 2 (1)(o)(ii) **Primary and secondary liners associated with leach pads, tailings storage facilities, and process ponds.**

¹ The department shall promptly commence an administrative review of IDAPA 58.01.13 and shall promulgate rules, subject to legislative approval, to bring such rules into compliance with the provisions of this section.

- Section 2 (3)(a) Designed with controls sufficient **to contain, control, and treat cyanidation process water, spent ore, tailings, and other material from the cyanidation processes to prevent discharge** of cyanidation pollutants into the environment that would impair beneficial use of waters of the state or degrade waters of the state. Such controls shall be based on generally accepted design standards that are consistent with generally accepted engineering practices and quality control and quality assurance procedures; and
- Section 2 (8)(c) (8) A permit application shall:
(c) **Not be required to have the level of design and engineering necessary for the IFC data package**, provided that in the final permit the director may condition construction on the review and approval of an IFC data package in accordance with subsection (18) of this section.
- Section 2 (10)(a) The department's review of any application made pursuant to this section **shall not duplicate or conflict with other permits or the permitting process for other permits required pursuant to Idaho law**, including permits administered by the department regarding protecting air, surface water, and ground water resources and authorizations made by the Idaho Department of Lands regarding reclamation and closure of a cyanidation facility. To the extent that other permits under Idaho law do not address or regulate potential cyanidation pollutants discharged from a cyanidation facility, the Department may review and address such cyanidation pollutants or other pollutants in accordance with the provisions of this section and rules promulgated thereunder.
- Section 2 (7)(a) (a) Before conducting a pre-application conference or submitting a preliminary design report, the **applicant and department shall execute a cost recovery agreement**. The cost recovery agreement shall provide for the recovery of the actual costs incurred by the department during the permitting process pursuant to this section and rules promulgated thereunder. The cost recovery agreement may provide for recovery of actual costs incurred by the department for any other service rendered pursuant to this section and rules promulgated thereunder if the applicant so agrees. The permitting process may include but is not limited to:...

1. Clearly Discuss Containment.

Our members want the process for developing permit applications to be clear, efficient, and protective. It is unnecessary to require information that is not essential to ensure a facility does not impair the beneficial use of, or degrade, waters of the State.

To set clear permit application requirements so permittees understand what is to be included in their applications based on the content of S1170 Section 2 (1)(o) and subsections and Section 2 (3)(a), the rule should clearly discuss containment, primary containment, and secondary containment.

We suggest the following added to definitions:

- “Containment” for purposes of this Rule, consists of liners, barriers, structures, or other similar physical measures to prevent discharge of cyanidation pollutants into the environment.
- “Primary containment” means the receptacle in which cyanidation process water, spent ore, tailings, and other material from the cyanidation process is contained during normal operations and may include, but is not limited to, tanks, vessels, pipes, equipment, or liners that directly hold or transport such substances under normal operating conditions.
- “Secondary containment” is a container, liner, or barrier intended to confine a spill or leak that originates from primary containment and may include, but is not limited to, berms, curbs, concrete slabs, vaults, or liners that confine substances that spill, drain, or leak from primary containment.

2. Separate Content of Application from Content of IFC Data Package from Content not Required if Redundant to Other Permits.

It is critical for DEQ to review details of permits at the proper stage of permitting. There needs to be clearer requirements for permit application procedural and technical completeness in contrast to the requirements for the later conditional stage of Issued for Construction plans and specifications.

IMA suggests elaborating upon the changes made in IDAPA 100.03 and dividing them into separate sections for Contents of Application in 100.03 and another list in Section 200 for Contents of IFC Data Package.

Similarly, requiring information or plans that are covered by other permits is expensive and time-consuming and leads to the potential for conflicting information or agency interpretations. It also complicates the review and blurs the lines of agency responsibilities. The statute therefore eliminates the need to review information already covered by relevant permit and agency reviews. To apply this to the proposed temporary rule, we make the following recommendation to Rule 100.03:

“03. Contents of Application. A permit application and its contents will be used to determine if an applicant can locate, construct, operate, maintain, close, and monitor the proposed cyanidation facility in conformance with these rules. The application must include all of the following information in sufficient detail to allow the Director to make necessary application review decisions concerning protection of human health and the environment.”

3. Clarify the timing of cost-recovery

To comply with S1170 Section 2 (7)(a), modify Rule 050.01 as such

“01. Pre-application Conference. Any person who intends to apply for a permit or proposes to construct or operate a facility that is intended to contain, treat, or dispose of process water and process-contaminated water generated in ore processing operations that utilize cyanide as a primary leaching agent should contact the Department during the initial stages of site characterization to schedule a pre-application conference. Once a cost recovery agreement in accordance with Section 39-118A(7), Idaho Code has been executed, Prospective applicants are encouraged to begin meeting with agents of the Department at least one (1) year in advance of the first phase of preliminary design submittal to discuss, at a minimum, the following.

Please implement the intent of the law signed by the Governor to streamline the cyanide facility permitting, not to reduce environmental protection, but to be efficient and effective, both for proponents and agencies.

We appreciate the opportunity to provide these comments. We would welcome the opportunity to participate further in this rulemaking if needed and would be happy to provide additional clarification or feedback upon request.

Kindest Regards,

A handwritten signature in blue ink, appearing to read "BJD", with a large, sweeping flourish extending to the right.

Benjamin J. Davenport
Executive V.P., Idaho Mining Association