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RE: Public Comment on Proposed Rule – Cyanidation: IDAPA 58.01.13

To Whom it May Concern:

Thank you for the opportunity to comment on the proposed cyanidation rules for IDAPA 58.01.13. The Idaho Mining Association (IMA) and its members appreciate the Idaho Department of Environmental Quality (IDEQ) engaging in negotiated rulemaking. We hope this process results in revisions that fulfill the intent of streamlining the permitting process by clarifying the requirements for cyanidation facility permit applications, as well as the review and approval procedures under Senate Bill 1170 (S1170) and Chapter 1, Title 39-118A(33)(a), Idaho Code.

58.01.13 – Rules for Ore Processing by Cyanidation.

Introduction.

Idaho Code 39-118A sets the requirements for the cyanidation permitting design to address containment and the prevention of degradation of waters of the state. The permit review and facility design are limited by the statute to the secondary containment of cyanidation pollutants in process equipment, tanks, and piping, and to primary and secondary liners associated with leach pads, tailings storage facilities.

It is also clear that another purpose of 39-118A was to avoid reviews that duplicate other permits. The rule should be consistent with the statute by only requiring data, analysis, specifications, and design information for the cyanide permit and to establish only those cyanidation permit obligations for containment and that will not be addressed by other state and federal permits (which would be a direct conflict with 39-118A(10)(a)).

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 appreciate the added definitions for both primary and secondary containment in Section .07 but request deleting the phrase “and treat” in both definitions. Treating cyanidation pollutants is not the purpose of primary or secondary containment. Also, we would suggest the following definition to be added:

- “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.

2. Separate Content of Application from Content of IFC Data Package

It is critical for IDEQ 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.

Accordingly, IMA believes the Rule should clarify what type of information can be included in the IFC Data package. To further clarify information necessary for the application, IMA recommends considering the addition of a new section between sections 100 and 200 to articulate which information or level of detail can be deferred to the Issued for Construction (IFC) data package. This would be a benefit to both applicants and IDEQ.

3. Avoid Redundancy of Permits

Requiring information or plans that are covered by other permits is expensive, 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 draft 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 Section [39-118A](#), Idaho Code, ~~and these~~*

~~and other applicable rules including, but not limited to, IDAPA 58.01.02, IDAPA 58.01.08, IDAPA 58.01.05, IDAPA 58.01.06, IDAPA 58.01.11, and IDAPA 58.01.25.~~ The application must include the information required by Section 39-118A(8), Idaho Code, and in this subsection, in sufficient detail to allow the Director to determine if the application is technically complete as defined in Section 39-118A(1)(o), Idaho Code, and is in compliance with Sections 200 through 205 as applicable, and Section 39-118A(8), Idaho Code.

4. Clarify the timing of cost-recovery

To comply with S1170 Section 2 (7)(a), IMA recommends modifying section 050.01 of the rule to reflect the following change:

***“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.*

5. Third Party Hired by IDEQ.

IMA recommends the inclusion of a provision in Section 50.01 for operator approval of independent third-party consultant hired by IDEQ pursuant to a cost recovery agreement similar to provisions in the Idaho Department of Lands Rule 20.03.02.05.b(i) seen below:

“i. Pursuant to Sections 47-1506(g) and 47-1508(f), 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”.

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

Kindest Regards,



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