



P.O. Box 1660 • Boise, ID 83701  
208.342.0031 • mineidaho.com

June 9, 2020

**VIA EMAIL** - [paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

Paula Wilson  
Idaho Department of Environmental Quality  
1410 N. Hilton  
Boise, ID 83706

**Re: DEQ Negotiated Rulemaking – Rules for the Design and Construction of Phosphogypsum Stacks  
Docket No. 58-0119-2001 – Discussion Points Document**

Dear Ms. Wilson:

The Idaho Mining Association (IMA) appreciates IDEQ's efforts in promptly moving forward with the subject draft Rule. We believe the draft Rule must be consistent with Idaho Code Sections 39-176A through 39-176F and settlement agreements that are currently in negotiation with EPA. Therefore, it would be appropriate to delay proceeding with the subject rule-making until a settlement agreement is finalized. Our initial comments to the subject discussion document follow but will likely be revised once a settlement agreement(s) is finalized.

Application of Idaho Code 39-107D

For the reasons stated in our letter of April 27, 2020, we do not believe the application of Idaho Code 39-107D is appropriate to this rule-making.

#### 000. LEGAL AUTHORITY

IMA believes that the rule needs to acknowledge that it is part of IDEQ's solid waste program consistent with the scope and applicability of Idaho Code Section 39-176B. Clearly the statute acknowledges that phosphogypsum and associated process water was exempted from hazardous waste regulation by EPA (and IDEQ) but is nevertheless regulated as a solid waste. (Unless in certain circumstances it is not a waste at all). We understand that IDEQ choose not to include the subject draft rule under the existing Solid Waste Management Rules at IDAPA 58.01.06. for administrative reasons. IMA believes the current exemption for phosphogypsum in IDEQ's Solid

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Waste Rules at IDAPA 58.01.06.001.03.b.vi. needs to be revised to recognize this rule once it is adopted by the Board.

#### 001. TITLE, SCOPE AND APPLICABILITY.

##### 02.b. Agreements with EPA and IDEQ

As recognized in the statute and the subject draft rule, the rule is not intended to effect enforcement agreements with EPA and IDEQ related to the construction of a PSS. As these agreements are still being negotiated with EPA and DEQ among IMA members, it would be appropriate to delay this rule-making until a settlement agreement(s) are finalized. The subject rule should not impact the negotiations or be inconsistent with any final settlement agreements.

##### 02.d. SCOPE

Consistent with our comment above, it would be appropriate to reference the applicable federal regulations governing minimum criteria and practices for solid waste facilities under Subtitle D of RCRA.

#### STORAGE

” IMA believes IDEQ’s proposed definition of storage is not appropriate and is contrary to the statute. Clearly the statute described storage of both phosphogypsum and process water in a PSS. Storage was not limited to just process water. Whether and under what circumstances phosphogypsum may be reused in the future as well as the issue of speculative accumulation is well beyond the subject rulemaking which only applies to the design and construction requirements for a PSS.

#### SEEPAGE TESTING

IMA does not believe this is an appropriate requirement in the draft Rule. The statute (and the Rule) is limited to the design and construction of a PSS. Seepage testing procedures are not required in the statute and clearly are related to operation of a PSS facility. Apart from the technical issues and concerns related to seepage testing for PSS, it is not appropriate to have this requirement in the rule. Operational limitations on a PSS are outside the scope of this rulemaking. Moreover, current IDEQ rules (Wastewater Rules) specifically exempt industrial facilities from seepage testing as compared to municipal wastewater facilities. See IDAPA 58.01.16. 401.06 and 493. Similar to our comments above, whether seepage testing is required will likely be addressed in future settlement agreement(s) once finalized.

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#### SITING CRITERIA.

The phosphogypsum legislation did not specify any siting criteria for a PSS. Therefore, IMA does not believe it is appropriate or necessary to specify any siting criteria in the subject draft Rule. The direction in the statute for PSS to be designed and constructed to protect water quality and the environment is sufficient to address any concern IDEQ may have regarding siting criteria. Moreover, future settlement agreement(s) will likely inform whether siting criteria for PSS are necessary.

#### COST RECOVERY.

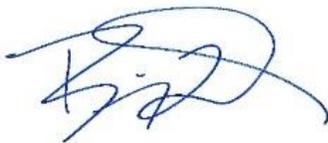
IMA believes the rule should specify a specific fee for review of plans for a PSS.

#### MONTHLY CONSTRUCTION REPORT/FINAL INSPECTION/DEVIATIONS

IMA does not believe these requirements are necessary or appropriate. The fact that IDEQ may have utilized similar procedures in prior enforcement orders is not an appropriate basis to include these requirements in a rule governing design and construction of new PSS. We believe the rule should not go beyond the requirements of the statute related to IDEQ 's involvement in the review and approval of plans and specifications and subsequent submission of a construction completion report.

Thank you for the opportunity to comment on subject Discussion Document.

Sincerely,

A handwritten signature in blue ink, appearing to read "B. J. Davenport", is written over a light blue circular stamp.

Benjamin J. Davenport