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20.03.02 - RULES GOVERNING EXPLORATION AND SURFACE MINING IN IDAHO

000. LEGAL AUTHORITY.

The following rules are promulgated by the Idaho State Board of Land Commissioners ("board") pursuant to the Idaho Surface Mining Act, Title 47, Chapter 15 ("act"), Idaho Code; and in the event of any conflict between these rules and the act, the latter shall be controlling. The board has delegated to the director of the Department of Lands ("department") the duties and powers under the act and these rules; provided that the board shall retain responsibility for administrative review. (11-1-89)

001. TITLE AND SCOPE.

01. Purpose. It is the purpose of these rules to provide for the protection of the public health, safety, and welfare, through measures to reclaim the surface of all the lands within the state disturbed by exploration operations and surface mining operations and thereby conserve natural resources, aid in the protection of wildlife, domestic animals, aquatic resources, and reduce soil erosion. 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 exploration operations and surface mining operations on lands within the state. These rules are not intended to require reclamation activities in addition to those required by the act. (11-1-89)

02. Scope. In general, these rules establish: (11-1-89)

a. Requirements for exploration operations; (11-1-89)

b. Procedures for approval of a surface mining reclamation plan; (11-1-89)

c. Requirements for performance bonds for postmining reclamation to be posted prior to beginning surface mining operations; (11-1-89)

d. Reclamation requirements; and (11-1-89)

e. Procedures for ensuring compliance with the Idaho Surface Mining Act and these rules. (11-1-89)

03. Other Laws. Exploration operations and surface mining operations shall comply with all applicable rules and regulations and laws of the state of Idaho including, but not limited to the following: (11-1-89)

a. Idaho water quality standards and waste treatment requirements (Title 39, Chapter 1, Idaho Code) and the Hazardous Waste Management Act of 1983 (Title 39, Chapter 44, Idaho Code) and rules promulgated pursuant thereto as administered by the Idaho Department of Health and Welfare, Division of Environmental Quality ("DEQ"). (11-1-89)

b. Section 39-118A, Idaho Code, and applicable rules for ore processing by cyanidation as promulgated and administered by the DEQ. (11-1-89)

c. 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. (11-1-89)

d. Idaho Dam Safety Act, Sections 42-1710 through 42-1721, Idaho Code, and applicable rules as promulgated and administered by the Idaho Department of Water Resources. (11-1-89)

04. Applicability. (7-1-93)

a. These rules apply to surface mining operations or exploration operations conducted on all lands within the state, regardless of ownership, commenced after the effective date of these rules. Provided further that these rules shall in no way affect, alter, or modify the terms or conditions of any approved reclamation plan or

previously approved amendment thereto, or performance bond for reclamation obtained prior to the effective date of these rules. All public or governmental agencies who extract minerals to be used by or for the benefit of such agency must comply with these rules. (11-1-89)

b. These rules do not apply to any surface mining operations performed prior to May 31, 1972, and further, an operator shall not be required to perform such reclamation activities as to any pit or overburden pile as it existed prior to May 31, 1972. However, if an operator elects to re-affect an area mined prior to May 31, 1972, the newly disturbed lands shall be subject to the act and these rules. (11-1-89)

c. These rules do not apply to surface mining operations for which the Idaho Dredge and Placer Mining Protection Act requires a permit, or which are otherwise regulated by that act, nor to surface disturbances caused by an underground mining operation. (11-1-89)

d. Sand and gravel mining operations in state owned beds of navigable lakes, rivers, or streams shall constitute an approved surface mining plan for the purpose of these rules, if they: (11-1-89)

i. Are covered by a valid lease granted by the board in accordance with the board's "Rules Governing Riverbed Mineral Leasing," (IDAPA 20.03.05); (11-1-89)

ii. Have a valid stream channel alteration permit issued by the Department of Water Resources; (11-1-89)

iii. Have a plan of operation for the mineral lease approved by the Department of Lands; and (11-1-89)

iv. Are covered by a valid mineral lease bond. (11-1-89)

002. (RESERVED).

003. ADMINISTRATIVE APPEALS.

01. Notice of Non-compliance. Whenever the director becomes aware that an operator has not complied with the provisions of the act or these rules, the director shall notify the operator in writing of this non-compliance and through conference with the operator seek to remedy the non-compliance. Any period set by the parties for correction of a violation shall be binding. (11-1-89)

02. Administrative Complaint In the event of the failure of any conference, conciliation, and persuasion to remedy any alleged violation, the board may cause to have issued and served upon the operator alleged to be committing such violation, a formal complaint which shall specify the provisions of this act which the operator allegedly is violating, and a statement of the manner in and the extent to which said operator is alleged to be violating the provisions of this act. Such complaint may be served by certified mail, and return receipt, signed by the operator, an officer of a corporate operator, or the designated agent of the operator, shall constitute service. (11-1-89)

03. Answer and Hearing. The operator shall be required to answer the formal complaint and request a hearing before a hearing officer appointed by the director within thirty (30) days of receipt of the complaint if matters asserted in the complaint are disputed. The hearing shall be held at a time not less than thirty (30) days after the date the operator requests such a hearing. The board shall issue subpoenas at the request of the director and at the request of the charged operator. The hearing will be conducted in accordance with Sections 67-5209 through 67-5213, Idaho Code, and these rules. (11-1-89)

04. Order. The hearing officer shall enter an order in accordance with Sections 67-5212, Idaho Code, which, if adverse to the operator, shall designate a time period within which prescribed corrective action, if any, should be taken. The designated time period shall be sufficient to allow a reasonably diligent operator to correct any violation. Procedure for appeal of an order is outlined in Section 160. (11-1-89)

05. Compliance with Order. Upon the operator's compliance with the order, the director will consider the matter resolved and shall take no further action with respect to such noncompliance. (11-1-89)

06. Default By Operator. If the operator fails to answer the complaint and request a hearing, the matters asserted in the complaint shall be deemed admitted by the operator, and the director may proceed to cancel the reclamation plan and forfeit the bond in the amount necessary to reclaim affected lands. (11-1-89)

004. -- 009. (RESERVED).

010. DEFINITIONS.

01. Act. The Idaho Surface Mining Act, title 47, chapter 15, Idaho Code. (11-1-89)

02. 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)

03. 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)

04. 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. (11-1-89)

05. 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)

06. DEQ. The Department of Health and Welfare, Division of Environmental Quality. (11-1-89)

07. Department. The Idaho Department of Lands. Its business address is 1215 W. State St., PO Box 83720, Boise, Idaho, 83720-0050. (11-1-89)

08. 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)

09. Exploration Drill Holes. Holes drilled from the surface to locate mineral bodies and to determine the mineability and merchantability thereof. (11-1-89)

10. 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)

11. Exploration Roads. Roads constructed to locate mineral bodies and to determine the mineability and merchantability thereof. (11-1-89)

12. Exploration Trenches. Trenches constructed to locate mineral bodies and to determine the mineability and merchantability thereof. (11-1-89)

13. 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)

14. 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)

15. 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)
16. Mined Area. Surface of land from which overburden or minerals have been removed other than by drilling of exploration drill holes. (11-1-89)
17. 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)
18. Mineral Stockpile. Mineral extracted during surface mining operations and retained at the surface mine for future rather than immediate use. (11-1-89)
19. Motorized Earth-Moving Equipment. Backhoes, bulldozers, front-loaders, trenchers, core drills, and other similar equipment. (11-1-89)
20. 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, 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 act. (11-1-89)
21. 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)
22. Overburden Disposal Area. Land surface upon which overburden is piled or planned to be piled. (11-1-89)
23. Peak. A projecting point of overburden. (11-1-89)
24. Pit. An excavation created by the extraction of minerals or overburden during surface mining operations. (11-1-89)
25. 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)
26. Revegetation. The establishment of the premining vegetation or a comparable vegetative cover on the land disturbed by surface mining operations. (11-1-89)
27. Ridge. A lengthened elevation of overburden. (11-1-89)
28. Road. A way constructed on a surface mine for the passage of vehicles, including the bed, slopes and shoulders thereof. (11-1-89)
29. 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)
30. 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)

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

32. 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)

011. -- 049. (RESERVED).

050. ADMINISTRATION.

The Department of Lands shall administer these rules under the direction of the director. (11-1-89)

051. -- 059. (RESERVED).

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 010.30. (11-1-89)

03. Notification. Any operator desiring to conduct exploration within the state of Idaho using motorized earth-moving equipment to locate minerals for immediate or ultimate sale, in either the natural or processed state, shall notify the department by certified mail within seven (7) days after beginning exploration operations. (11-1-89)

04. Contents of Notification. The letter shall include the following. (11-1-89)

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

b. The legal description of the exploration operation and its starting and estimated completion date; (11-1-89)

and

c. The anticipated size of the exploration operation and the general method of operation. (11-1-89)

05. Confidentiality. The letter shall be treated as confidential in accord with Section 180. (11-1-89)

06. Exploration Reclamation (Less Than Two (2) Acres). Every operator who conducts exploration operations affecting less than two (2) acres shall: (11-1-89)

a. Wherever possible, contour the affected lands to their approximate previous contour; and (11-1-89)

b. Conduct revegetation activities in accordance with Subsection 140.10. 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. (11-1-89)

c. If water runoff from exploration operations causes siltation of surface waters in excess of that which normally results from runoff, the operator shall prepare affected lands and adjoining lands under his control as is necessary to re-establish conditions of runoff water existing prior to commencement of exploration operations, 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. (11-1-89)

07. Exploration Reclamation (More Than Two (2) Acres). Reclamation required for exploration operations affecting more than two (2) acres: (11-1-89)

a. Abandoned exploration drill holes shall be plugged, or otherwise left so as to eliminate hazards to humans and animals. Pits or trenches on federal 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. (11-1-89)

b. If water runoff from affected lands results in siltation of surface waters in excess of that which normally results from runoff, the operator shall prepare affected lands and adjoining lands under the operator's control as is necessary to meet state water quality standards, or to re-establish conditions of runoff water quality prior to commencing exploration operations, 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. (11-1-89)

c. Abandoned exploration roads shall be cross-ditched as necessary to minimize erosion. The director may request in writing, or be petitioned in writing, that a given road or section of road be left for a specific purpose and not be cross-ditched or revegetated; if such request or petition is approved, the operator cannot thereafter be required to conduct reclamation activities with respect to that given road or section of road. (11-1-89)

d. The operator shall conduct revegetation activities in accordance with Subsection 140.10. (11-1-89)

e. Ridges of overburden shall be leveled so as to have a minimum width of ten (10) feet at the top. (11-1-89)

f. Peaks of overburden shall be leveled so as to have a minimum width of fifteen (15) feet at the top. (11-1-89)

g. Overburden piles shall be reasonably prepared to control erosion. (11-1-89)

h. Abandoned lands affected 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. (11-1-89)

i. Any water containment structure created in connection with exploration operations, shall be reasonably prepared so as not to constitute a hazard to human or animal life. (11-1-89)

08. Additional Reclamation. The operator and the director may agree, in writing, to do any act with respect to reclamation above and beyond the requirements set forth in these rules. (11-1-89)

061. -- 069. (RESERVED).

070. APPLICATION PROCEDURE AND REQUIREMENTS FOR A SURFACE MINING RECLAMATION PLAN.

01. Reclamation Plan Required. No operator shall conduct surface mining operations, as defined in these rules, on any lands in the state of Idaho until the surface mining reclamation plan has been approved by the director, and the department has received a bond meeting the requirements of these rules. (11-1-89)

02. Application Package. The operator must submit five (5) copies of the surface mining application package, for each separate surface mine or mine panel, before the reclamation plan will be granted approval. Separate surface mines are individual, physically disconnected operations. The complete application package consists of: (11-1-89)

a. An application provided by the director; (11-1-89)

b. A map or maps of the proposed mining operation which includes the information required under

Subsection 070.03; (11-1-89)

c. A reclamation plan, in map and narrative form, which includes the information required under Subsection 070.04. The map and reclamation plan may be combined on one sheet if practical; (11-1-89)

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 operator will take to control such nonpoint source impacts; and (11-1-89)

e. An out-of-state operator shall designate an in-state agent authorized to act on behalf of the operator. In case of an emergency requiring action to be taken to prevent environmental damage, the authorized agent will be notified as well as the operator. (11-1-89)

03. Requirements of Maps. Vicinity maps shall be prepared on standard United States Geological Survey, 7.5 minute quadrangle maps, or equivalent. Maps of the proposed surface mining operation site shall be of sufficient scale to adequately show the following: (11-1-89)

a. The location of existing roads, access, and main haulage roads to be constructed or reconstructed, in conducting the surface mining operation, along with approximate dates for construction, reconstruction, and abandonment; (11-1-89)

b. The approximate location, and the names, if known, of all streams, creeks, or bodies of water within one thousand (1,000) feet of the surface mining operation; (11-1-89)

c. The approximate boundaries of the lands to be utilized in the surface mining operations, including legal description to the quarter-quarter section; (11-1-89)

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 following approval of a surface mining reclamation plan; (11-1-89)

e. The currently planned location of all tailings ponds and other ancillary structures which will be utilized in the surface mining operation; (11-1-89)

f. The currently planned location and configuration of pits, mineral stockpiles, and overburden piles which will be utilized in surface mining operations; (11-1-89)

g. Scaled cross-sections by length and height showing surface profiles prior to mining; and (11-1-89)

h. A surface and mineral control or ownership map of appropriate scale for boundary identification. (11-1-89)

04. Requirements for Reclamation Plan. A reclamation plan must be submitted in map and narrative form and include the following: (11-1-89)

a. Scaled cross-sections by length and height, showing planned surface profiles before and after mining and reclamation; (11-1-89)

b. On a drainage control map, show the best management practices to be utilized to minimize erosion on affected lands; (11-1-89)

c. Roads to be reclaimed; (11-1-89)

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; (11-1-89)

- e. The planned reclamation of tailings or sediment ponds; and (11-1-89)
- f. 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)

05. Limitation. Nothing herein shall be construed to require the submission of a mining plan to the director for approval, except to the extent required to comply with Subsection 070.02.d. (11-1-89)

06. Approval Required. Approval of a reclamation plan must be obtained under these rules, even if approval of such plan has been or is obtained from an appropriate federal agency. (11-1-89)

071. -- 079. (RESERVED).

080. PROCEDURES FOR REVIEW AND DECISION UPON AN APPLICATION.

01. Return of Application. Within thirty (30) days after receipt by the department, an application for a surface mining reclamation plan may be returned for correction and resubmission if either the reclamation plan or mine map(s) are incomplete. Return of an application by the director shall constitute a rejection pursuant to Section 47-1507(b), Idaho Code. (11-1-89)

02. Agency Comments. Nonconfidential materials submitted under Section 070 shall be forwarded by the director to the Departments of Water Resources, Health and Welfare (DEQ), and Fish and Game for review and comment. Such review and comment shall not extend the legal time limit for the director to notify the applicant of a decision on the application. The director may decide not to circulate applications for sand and gravel mining operations if the impacts of such proposed activities are minor and do not involve surface waters. 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. (11-1-89)

03. Decision on Application in Sixty (60) Days. The director must notify the applicant in writing of approval or denial within sixty (60) days of receipt of the application, unless prevented from inspecting the proposed surface mining site as provided in Subsection 080.09. If the director fails to deliver a notice of approval or denial within this time period, the application shall be deemed to comply with these rules, and the applicant may proceed, with bonding requirements under Section 120, as though approval for the application had been received. (11-1-89)

04. Approval. Following review of an application for approval of a new reclamation plan, or for amendment of an existing plan, the director shall approve the application if it meets the requirements of the rules, the act, and other pertinent laws and regulations, and shall deliver written notice of the decision to the operator. Operations may then commence after the bonding requirements of Section 120 are met. (11-1-89)

05. Inspections. If the director deems a field inspection of the proposed surface mining operations site necessary in processing an application, the applicant will be contacted and asked that he or his duly authorized employee or agent be present. The applicant shall make such persons available for the purpose of inspection. This rule shall not prevent the department from making an inspection of the site if the applicant does not appear. (11-1-89)

06. Nonpoint Pollution. When the director determines, after consultation with DEQ, that there is a reasonable potential for nonpoint source pollution of adjacent surface waters, the director shall request, and the operator shall provide to the director, baseline preproject 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. (11-1-89)

07. Reasons for Denial. If the director rejects an application, the director must also deliver in writing to the applicant a statement of the reasons the application was rejected, the factual findings upon which the rejection was based (if applicable), a statement of the rule(s) involved, the manner in which the application failed to fulfill the requirements of these rules, and the action that must be taken or conditions that must be satisfied in order to meet the requirements of these rules. The applicant may then submit an amended application which will be processed as

described in Section 080.

(11-1-89)

08. **Public Hearing.** The director may, at his discretion, call a public hearing to determine whether a proposed application complies with these rules. The hearing shall be conducted according to Section 110. A hearing may not cause the director's action on a plan to extend beyond sixty (60) days from time the plan was received by the director.

(11-1-89)

09. **Notification of Decision.** The applicant will be notified in writing of the director's decision to approve or reject the application within sixty (60) days of its receipt. If weather conditions prevent the director from inspecting the proposed surface mining site to acquire the information required to evaluate the application, the application may be placed in suspense, pending improved weather conditions. The director's decision upon the application must be given to the applicant in writing within thirty (30) days of the date that weather conditions permit inspection. If the director fails to take action within the statutory time limits, the plan shall be deemed to comply with the act and the operator may commence operations upon furnishing a bond to the department that meets the requirements of these rules.

(11-1-89)

10. **Approved Plan.** Notice of approval shall constitute an approval of the reclamation plan and such approved plan shall govern and determine the nature and extent of the reclamation obligations of the operator. A bond in accord with Section 120 must be received by the department before mining operations can begin.

(11-1-89)

11. **Referral to Board.** The director may refer the decision concerning approval or rejection of an application to the board. This action will not operate to extend the time allowed the director for review and decision under these rules.

(11-1-89)

12. **Additional Reclamation.** The operator and the director may agree, in writing, to do any act with respect to reclamation above and beyond the requirements set forth in these rules.

(11-1-89)

13. **Appeal of Final Order.** Any final order of the board regarding an application for approval of a surface mining reclamation plan may be appealed pursuant to Subsection 160.07.

(11-1-89)

081. -- 089. (RESERVED).

090. AMENDING AN APPROVED PLAN.

01. **Application for Amendment.** If circumstances arise which the operator believes require a change in the reclamation plan, the operator will submit an application to amend the plan and state the reasons therefor. An amendment refers to changes in the plan or the addition of acreage.

(11-1-89)

02. **Review of Amendment.** The director will process an application to amend a plan in accord with Section 080 and Section 110; provided, however, that no (1) land, or (2) aspect or provision of an approved reclamation plan, that would not be affected by the proposed amendment, shall be subject to such amendment or to review or reapproval in connection with the processing of an application for such an amendment; nor may approval of an amendment to the reclamation plan be conditioned upon the performance of any act not required by the reclamation plan or the proposed amendment itself, unless the operator agrees to perform that act.

(11-1-89)

03. **Minor Amendments.** Minor amendments to an approved reclamation plan may be made by agreement between the director and the operator, if the amendment is consistent with the overall objectives of the approved reclamation plan and so long as water quality standards will be met and existing beneficial uses will be protected.

(11-1-89)

091. -- 099. (RESERVED).

100. DEVIATION FROM AN APPROVED PLAN.

01. **Unforeseen Events.** If an operator finds that unforeseen events or unexpected conditions require immediate change from an approved plan, the operator may continue surface mining in accordance with the procedures dictated by the changed conditions, pending submission and approval of an amended plan, even though

operations do not comply with the currently approved plan. This shall not excuse the operator from complying with the reclamation requirements and best management practices of Section 140 and bond requirements of Section 120. (11-1-89)

02. Notification. The director shall be notified within ten (10) days of the discovery of events or unexpected conditions that require deviation from the approved plan. A proposed amendment to the plan will be submitted by the operator to the director within thirty (30) days of the discovery of the unforeseen events or unexpected conditions. (11-1-89)

101. -- 109. (RESERVED).

110. PUBLIC HEARING.

01. Public Concern. The director may call for a public hearing following the preliminary review of the application and any concern registered with the director by the public, affected landowners, or any governmental entity which may be affected. The sole purpose of the hearing under this subsection shall be to gather written and oral statements as to whether the proposed reclamation plan meets the requirements of the act and these rules. (11-1-89)

02. Agency Concern. The director shall call for a public hearing when the director determines, after consultation with the Departments of Water Resources, Health and Welfare (DEQ), Fish and Game, and affected Indian tribes (pursuant to Subsection 080.06), that proposed surface mining operations can reasonably be expected to significantly degrade adjacent surface waters. A hearing held under this subsection will be conducted to receive comment on the measures the operator will use to protect surface water quality from nonpoint source water pollution. (11-1-89)

03. Consolidation. If the director determines that a hearing should be held under both Subsections 110.01 and 110.02, the director shall order that such proceedings be consolidated. The applicant and the public must be advised of the specific subjects to be discussed at the hearing at least twenty (20) days prior to the hearing. (11-1-89)

04. Hearing Location. A hearing shall be held in the locality of the proposed surface mine at a reasonably convenient time and place for public participation. The director may call for more than one hearing when conditions warrant. (11-1-89)

05. Notice. The director shall give notice of the date, time, and place of the hearing to the applicant, to federal, state, local agencies, and Indian tribes which may have an interest in the decision, as shown on the application; to all persons petitioning for the hearing, if any; and to any person identified by the applicant pursuant to Subsection 070.02.e. as an owner of the specific acreage to be affected by the reclamation plan. Notice to the applicant must be sent by certified mail and postmarked not less than twenty (20) days before the scheduled date of the public hearing. (11-1-89)

06. Publication of Notice. The director shall provide at least twenty (20) days advance notice to the general public of the date, time, and place of the hearing. A newspaper advertisement will be placed once a week, for two (2) consecutive weeks, in the locale of the area covered by the application. (11-1-89)

a. In the event a hearing is ordered under Subsection 110.03, the notice to the public shall describe the potentially significant surface water quality degradation and shall contain the operator's description of the measures that will be taken to prevent degradation of adjacent surface waters from nonpoint sources of pollution. The foregoing shall be discussed at the public hearing. (11-1-89)

b. A copy of the application shall be placed for review in a public place in the local area of the proposed mining operation, in the closest Department of Lands' area office, and the Department of Lands administrative offices in Boise. (11-1-89)

07. Hearing Officer. The hearing shall be conducted by the director or his designated representative. Both oral and written testimony will be accepted. Proceedings of the hearing will be tape recorded and, if requested, a verbatim transcript will be prepared. (11-1-89)

08. Consideration of Hearing Record. The department shall consider the hearing record when reviewing reclamation plans for final approval or rejection. (11-1-89)

111. -- 119. (RESERVED).

120. PERFORMANCE BOND REQUIREMENTS.

01. Submittal of Bond Before 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 percent (10%), but in no event shall any bond exceed one thousand eight hundred dollars (\$1,800) for a given acre of affected land. (11-1-89)

02. Limits. Only bonds obtained subsequent to June 30, 1985, may be assessed at actual costs plus ten percent (10%), not to exceed one thousand eight hundred dollars (\$1,800) per acre. (11-1-89)

03. 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 correlative increase in the bond will be required for an increase in affected acreage. (11-1-89)

a. The bond shall be submitted on the appropriate bond form within ninety (90) days of operator's receipt of notice that additional bond is required, but in no event shall surface mining operations be conducted that would affect such additional acreage until the appropriate bond form has been submitted. Acreage on which reclamation is complete shall be reported in accord with Subsection 120.08 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. (11-1-89)

b. Any bond provided to the federal government that also meets the requirements of this section shall be sufficient for the purposes of these rules. (11-1-89)

04. Form of Performance Bond. (11-1-89)

a. Corporate surety bond; This is an indemnity agreement executed for the operator and a corporate surety licensed to do business in the state of Idaho, on a surface mine bond form supplied by the director. The bond is to be conditioned that the operator shall faithfully perform all requirements of these rules in effect as of the date of approval of the reclamation plan, and will be payable to the state of Idaho. (11-1-89)

b. Collateral bond; This is an indemnity agreement executed by or for the operator, and payable to the state of Idaho, pledging cash deposits, governmental securities, or negotiable certificates of deposit of any financial institution authorized to do business in Idaho. Collateral bonds shall be subject to the following conditions: (11-1-89)

i. The director shall obtain possession, and upon receipt of such collateral bonds, deposit such cash or securities with the state treasurer to hold in trust for the purpose of bonding reclamation performance; (11-1-89)

ii. The director shall value collateral at its current market value, not face value; (11-1-89)

iii. Certificates of deposit shall be issued or assigned to the state of Idaho, in writing, and upon the books of the financial institution issuing such certificates. Interest will be allowed to accrue and may be paid by the bank, upon demand, to the operator, or other person which posted the collateral bond; (11-1-89)

iv. Amount of an individual certificate shall not exceed the maximum amount insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation or their successors; (11-1-89)

v. Financial institutions issuing such certificates shall waive all rights of set-off or liens which it has or might have against such certificates; (11-1-89)

- vi. Any such certificates shall be automatically renewable; and (11-1-89)
- vii. The certificates of deposit shall be of sufficient amount to ensure that the director would be able to liquidate such certificates prior to maturity, upon forfeiture, for the amount of the required bond, including any penalty for early withdrawal. (11-1-89)
- c. Letters of credit: (11-1-89)
- i. A letter of credit is an instrument executed by a bank doing business in Idaho, made at the request of a customer, which states that the issuing bank will honor drafts for payment upon compliance with the terms of the credit; (11-1-89)
- ii. All credits shall be irrevocable and prepared in a format prescribed by the director; (11-1-89)
- iii. All credits must be issued by an institution authorized to do business in the state of Idaho or through a correspondent bank authorized to do business in the state of Idaho; and (11-1-89)
- iv. The account party on all credits must be identical to the entity identified on the surface mining reclamation plan as the party obligated to do the reclamation. (11-1-89)
05. Blanket Bond. Where an operator is involved in numerous surface operations, the director may accept a blanket bond in lieu of separate bonds under approved plans. The amount of such bond shall comply with other applicable provisions of Section 120 and shall be equal to the total of the penalties of the separate bonds being combined into a single bond. The bonded principal shall be liable for an amount not to exceed one thousand eight hundred (\$1,800) per affected acre should action be taken against the bond under Subsection 120.10. (11-1-89)
06. Notice of Cancellation. Any surety company cancelling a bond shall give the department at least ninety (90) days notice prior to cancellation. The director shall not release a surety from liability under an existing bond until the operator has submitted to the director an acceptable replacement bond or reclaimed the site. Replacement bonds shall cover any liability accrued against the bonded principal on the surface mined area covered by the previous bond. If an operator fails to submit an acceptable replacement bond prior to the effective date of cancellation of the original bond, or within thirty (30) days following written notice of cancellation by the director, whichever is later, the director may issue a cease and desist order and seek injunctive relief to stop the operator from conducting surface mining operations on the lands covered by the bond until such replacement has been made. (11-1-89)
07. Revocation of Surety License. If a surety's Idaho business license is suspended or revoked, the operator shall, within thirty (30) days after notice by the department, find a substitute for such surety. The substitute surety must be licensed to do business in Idaho. If the operator fails to secure such substitute surety, the director may issue a cease-and-desist order and seek injunctive relief to stop the operator from conducting surface mining operations on the lands covered by the bond until a substitution has been made. (11-1-89)
08. Bond Reduction. 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)
- a. 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)
09. 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)

10. **Criteria for Forfeiture.** A bond may be forfeited in accordance with Section 47-1513, Idaho Code, when the operator has not conducted the reclamation in accord with the approved reclamation plan and the applicable requirements of these rules. (11-1-89)

11. **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)

12. **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)

13. **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)

121. -- 129. (RESERVED).

130. TRANSFER OF APPROVED PLANS.

A surface mining reclamation plan may be transferred from one operator to another after the department's approval. To complete a transfer, the new applicant must file a notarized assumption of reclamation plan form as prescribed by the department. The new operator then shall be responsible for the past operator's obligations under the act, these rules, and the reclamation plan. When a replacement bond is submitted relative to an approved surface mining reclamation plan, the following rider must be filed with the department as part of the replacement bond before the existing bond will be released: (Surety company or principal) understands and expressly agrees that the liability under this bond shall extend to all acts for which reclamation is required on areas disturbed in connection with surface mining reclamation plan No., both prior and subsequent to the date of this rider." (11-1-89)

131. -- 139. (RESERVED).

140. BEST MANAGEMENT PRACTICES AND RECLAMATION FOR SURFACE MINING OPERATION INTRODUCTION:

The use of the word "shall" with respect to any practice, act, or result specified in this rule means that employment of such practice, doing of such act, or the attainment of such result is mandated by these rules. The use of the word "should" with respect to any act or result specified in these rules means that the utilization of such practice, the doing of such act, or the attainment of such result is advisable and will constitute compliance with these rules, but does not mandate utilization of such practice, the doing of such act, or the attainment of such result if other acceptable practices, acts, or results are available. Enumeration of a practice, act, or result in Section 140 shall not be construed to require its specific inclusion in a reclamation plan submitted for approval under Subsection 070.04. (11-1-89)

01. Nonpoint Source Sediment Control. (11-1-89)

a. Appropriate best management practices for nonpoint source sediment controls shall be designed, constructed, and maintained with respect to site-specific surface mining operations. Operators shall utilize best management practices designed to achieve state water quality standards and protect existing beneficial uses of adjacent surface waters, but shall not be required to do more than is necessary to preserve the condition of water runoff from the affected land prior to commencement of the subject surface mining or exploration 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 best management practices unless the operator can show, and the director determines, that a lesser standard of surface water quality had existed, in the area to be affected, prior to the commencement of the subject surface mining or exploration operations. 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: (11-1-89)

- i. Keeping the disturbed area to a minimum at any given time through progressive reclamation; (11-1-89)
- ii. Shaping waste to help reduce the rate and volume of water runoff by increasing infiltration; (11-1-89)
- iii. Retaining sediment within the disturbed area; (11-1-89)
- iv. Diverting surface runoff around the disturbed area; (11-1-89)
- v. Routing runoff through the disturbed area using protected channels or pipes so as not to increase sediment load; (11-1-89)
- vi. 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 (11-1-89)

- vii. Use of adequate sediment ponds, with or without chemical treatment. (11-1-89)
- b. If best management practices 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 best management practices to meet the controlling standard of surface water quality as determined by the director under Subsection 140.01.a., or as water quality standards are adjusted pursuant to law. (11-1-89)
02. 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 year's mining activity) as the operator shall be required to meet the controlling standard of surface water quality established in Subsection 140.01.a. on all such areas. Where practicable, trees and slash should be stockpiled for use in seedbed protection and erosion control. (11-1-89)
03. Overburden/Topsoil. To aid in the revegetation of affected land 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. (11-1-89)
- 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 best management practices necessary to prevent violation of water quality standards; and (11-1-89)
- iii. Where the operator can show that an overburden material other than topsoil is equally 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. (11-1-89)
- 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 as terracing, silt fences, chemical binders, seeding, and mulching. (11-1-89)
- d. Abandoned affected lands shall be topped with topsoil or other type of overburden conducive to the growth of vegetation to achieve a general stable uniform thickness to the extent that such materials are reasonably available from the mine. 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. (11-1-89)
- e. Backfill materials should be compacted in a manner to ensure stability of the fill. (11-1-89)
04. Roads. (11-1-89)
- a. Roads shall be constructed to minimize soil erosion. Such construction may require, but is not limited to, restrictions on length and grade of roadbed, surfacing of roads with durable non-toxic material, stabilization of cut and fill slopes, and other techniques designed to control erosion. (11-1-89)

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 which are to be abandoned shall be cross-ditched and revegetated, as necessary, to control erosion. (11-1-89)

f. Roads, not abandoned, which are to continue in use under the jurisdiction of a governmental or private landowner, shall comply with the nonpoint source sediment control provisions of Subsection 140.01.a. until the successor assumes control. (11-1-89)

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

a. Every operator who conducts surface mining 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 140.10. For showing discovery on federal mining claims, unless otherwise required by a federal agency, one (1) pit may be left open on each claim pending verification by federal mining examiners, but must not create a hazard to humans or animals. Such pits and trenches shall be reclaimed within one (1) year of verification. (11-1-89)

b. An operator who conducts surface mining 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. For showing discovery on federal mining claims, unless otherwise required by a federal agency, one (1) pit may be left open on each claim pending verification by federal mining examiners, but must not create a hazard to humans or animals. Such pits and trenches shall be reclaimed within one (1) year of verification. (11-1-89)

c. Backfill materials should be compacted in a manner to ensure stability of the fill. (11-1-89)

d. After the disturbed area has been graded, slopes will be measured for compliance with the reclamation plan. (11-1-89)

06. Disposal of Waste in Areas Other Than Mine Excavation. Waste material not used in backfilling mined areas shall be transported and placed in a manner designed to stabilize the waste piles and control erosion. (11-1-89)

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 to stabilize the face of any fill. Slopes of the fill

material should not exceed angle of repose. (11-1-89)

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 140.10. (11-1-89)

07. 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 and Safety of Dams Rules, where applicable. (11-1-89)

08. 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 accord with Subsection 140.03. (11-1-89)

c. Abandonment and decommissioning of tailings impoundments: (11-1-89)

i. Dewatering -- Tailings ponds shall be dewatered to the extent necessary to provide an adequate foundation for the approved post-mining use. (11-1-89)

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. (11-1-89)

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. (11-1-89)

iv. Reclamation -- Following the required dewatering, detoxification, and surface drainage control measure operations, the reservoir and impounding structure shall be retopped with stockpiled topsoils or other soils conducive to plant growth. Where such soils are limited in quantity or not available, physical or chemical methods of erosion control may be used. All such areas are to be revegetated in accord with Subsection 140.10, unless otherwise specified in the reclamation plan. (11-1-89)

d. Tailings impoundment structures and reservoirs retained as fresh water reservoirs after abandonment of the mining operation, shall be required at the time the operator requests termination of the

reclamation plan, to conform with the Idaho Dam Safety Act, Sections 42-1710 through 42-1721, Idaho Code, if applicable. (11-1-89)

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

a. Seeding and planting of affected lands should be conducted during the first normal period for favorable planting conditions after final seedbed preparation. (11-1-89)

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)

10. 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 prior to surface mining operations. 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. (11-1-89)

b. Standards for success of revegetation -- Revegetative success, unless otherwise specified in the approved reclamation plan, shall be measured against the existing vegetation on site prior to mining, or against an adjacent reference area supporting similar types of vegetation. (11-1-89)

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 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. (11-1-89)

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 operations, vegetation should be established to the extent necessary to control erosion, but shall not be less than that which existed before redisturbance; and (11-1-89)

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. (11-1-89)

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: (11-1-89)

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 piles proposed to be used in the mining operations for haulage roads, so long as those roads are not abandoned; (11-1-89)

iii. Any mined area or overburden pile, where lakes are formed by rainfall or drainage run-off from adjoining lands; (11-1-89)

iv. Any mineral stockpile; (11-1-89)

v. Any exploration trench which will become a part of any pit or overburden disposal area; and (11-1-89)

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 plan where slopes are steeper than 3:1 or mean annual rainfall is less than twelve (12) inches. "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. (11-1-89)

141. -- 149. (RESERVED).

150. TERMINATION OF A PLAN.

A reclamation plan shall terminate upon request of the operator, upon completion of all reclamation activity to the standards specified in the plan, and final inspection and approval by the director. Upon termination, the director will release the remaining bond, notify the operator, and any authority to operate under the plan shall terminate. (11-1-89)

151. -- 159. (RESERVED).

160. ENFORCEMENT AND FAILURE TO COMPLY.

01. Right of Inspection. Authorized officers of the Department of Lands, upon presentation of appropriate credentials, shall have the right to enter upon lands affected or proposed to be affected by exploration or surface mining operations to determine compliance with these rules. Inspections shall be conducted at reasonable times in the presence of the operator or his authorized employee or representative. The operator shall make such a person available for the purpose of inspection. This rule shall not prevent the department from making an inspection of the site if the operator fails to make a representative available on request. (11-1-89)

02. Bond Forfeiture. Upon request of the director, the attorney general may institute proceedings to have the bond of an operator forfeited for violation of an order entered pursuant to Section 003. (11-1-89)

03. Satisfaction of Obligations. The forfeiture of a reclamation bond shall fully satisfy all obligations of the operator to reclaim affected lands except as provided in Subsection 160.05. (11-1-89)

04. Civil Penalty. If the violation is committed by an unbonded operator, or an operator who violates these rules by performing an act which is not included the approved reclamation plan and is not subsequently approved by the department, the operator shall be subject to a civil penalty as provided in Section 47-1513(c), Idaho Code. The amount of such a penalty shall be the anticipated cost of reasonable reclamation of affected lands as determined by the director. (11-1-89)

05. Injunctive Procedures. (11-1-89)

a. The director may seek injunctive relief, as provided by Section 47-1513, Idaho Code, against any operator who is conducting surface mining or exploration operations without having a required reclamation bond or an approved reclamation plan. The director may proceed by legal action to recover the anticipated cost of performing the reclamation activities required by the Surface Mining Act if the operator has no bond on file to cover this cost. (11-1-89)

b. The director may seek injunctive relief to enjoin a surface mining operation for the operator's violation of the terms of an existing approved plan and if immediate and irreparable injury, loss, or damage to the state may be expected to occur. (11-1-89)

c. The director shall request the court to terminate any injunction when he determines that all conditions, practices, or violations listed in the order have been abated. Termination shall not affect the right of the department to pursue civil penalties for these violations in accordance with Subsections 160.06 and 160.07. (11-1-89)

06. Civil Penalty. (11-1-89)

a. Following notice to an operator of noncompliance in accord with Section 003, in addition to the penalty established in Subsection 160.04, any operator: (1) who violates any of the provisions of the act or these

rules, or; (2) who fails to perform duties imposed by these provisions, or; (3) who violates any order pursuant to the provisions of these rules, shall be liable to a civil penalty of not less than five hundred (\$500) or more than two thousand five hundred (\$2,500) for each day a violation continues after notice from the director that such violation has occurred. In addition, the director may seek injunctive relief against the operator to enjoin the operator from continuing such violation. (11-1-89)

b. Willful violation -- Any person who willfully and knowingly falsifies any records, plans, information, or other data required by these rules, or willfully fails, neglects, or refuses to comply with any of the provisions of these rules, shall be guilty of a misdemeanor and shall be punished by a fine of not less than one thousand dollars (\$1,000) or more than five thousand dollars (\$5,000) or imprisonment, not to exceed one (1) year, or both. (11-1-89)

07. Procedure for Appeals. (11-1-89)

a. Any operator not satisfied with any final order of the board regarding these rules, may, within sixty (60) days after receiving the order, appeal to the district court of the state of Idaho for the county wherein the operator resides or has a place of business, or where the land affected by the order is located. The appeal shall be initiated by filing with the clerk of such court two (2) copies of the notice of appeal, together with two (2) copies of the complaint against the board. The complaint shall describe the prior proceedings before the board, director, or hearing officer and shall state the grounds upon which the operator believes he is entitled to relief. (11-1-89)

b. A copy of the operator's summons and complaint shall be delivered to the attorney general or his or her authorized representative. Upon receiving a notice of appeal and complaint, the board shall prepare, certify, and file in said court, a true copy of any decision, findings of fact, or conclusions of law, or order, together with any pleading upon which the case was heard and submitted to the board, director, or hearing officer. The board shall, upon order of the court, provide transcripts of any record, including all exhibits and testimony, of any proceedings in the matter before the board or any of its subordinates. Such suit in the district court shall be a trial de novo and shall proceed in all respects like other civil suits. As such, this includes, but is not limited to, the rights of appeal to the Supreme Court of the state of Idaho. (11-1-89)

c. When the director or the board finds that justice so requires, it may postpone the effective date of a final order pending judicial review. The reviewing court, including the court to which a case may be taken on appeal, may issue all necessary and appropriate orders to postpone the effective date of any final order pending conclusion of the review proceedings. (11-1-89)

d. Notwithstanding any other provisions of these rules concerning administrative or judicial proceedings, whenever the board determines that an operator has not complied with the provisions of these rules, the board may file a civil action in the district court for the county wherein the violation or some part occurred, or in the district court for the county where the defendant resides. The board may request the court to issue an appropriate order to remedy any alleged violation. The right to appeal to the Supreme Court of the state of Idaho shall be available as in other civil suits. (11-1-89)

161. -- 169. (RESERVED).

170. COMPUTATION OF TIME.

Computation of time for these rules will be based on calendar days. In computing any period of prescribed time, the day on which the designated period of time begins is not included. The last day of the period is included unless it is a Saturday, Sunday, or legal holiday on which the department is not open for business. In such a case, the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. Intermediate Saturdays, Sundays, or legal holidays are excluded from the computation when the period of prescribed time is seven (7) days or less. (11-1-89)

171. -- 179. (RESERVED).

180. CONFIDENTIALITY OF INFORMATION.

01. Nondisclosure. Notice of exploration as required under Section 060 and any materials submitted to

the board, the director, or the department as confidential 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. (11-1-89)

02. Use By Board. Any plans, documents, or materials submitted as confidential and held as such shall not prohibit the board, director, or department from using all information available to it in any administrative hearing or judicial proceeding brought under Section 160. (11-1-89)

03. BMPS. An operator shall not unreasonably designate as confidential portions of reclamation plans which detail proposed best management practices to meet state water quality standards and protect existing beneficial uses of surface waters. (11-1-89)

181. -- 189. (RESERVED).

190. DEPOSIT OF FORFEITURES AND DAMAGES.

All penalties, forfeitures, and civil damages collected under the provisions of these rules shall be deposited with the state treasurer in a special surface mine reclamation fund to be used by the director for surface-mined land reclamation purposes. (11-1-89)

191. -- 199. (RESERVED).

200. COMPLIANCE OF EXISTING PLANS.

These rules, upon their adoption, shall apply as appropriate to all existing surface mining operations, but shall not affect the validity or modify the duties, terms, or conditions of any existing approved reclamation plan or impose any additional obligations with respect to reclamation upon any operator conducting surface mining operations pursuant to a reclamation plan approved prior to adoption of these rules. (11-1-89)

201. -- 999. (RESERVED).