

# Table Of Contents

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## 16.01.13 - Rules For Ore Processing By Cyanidation

000. Legal Authority. ....	2
001. Title, Scope And Intent. ....	2
002. Definitions. ....	2
003. -- 009. (Reserved). ....	4
010. Applicability To Existing Facilities. ....	4
011. -- 049. (Reserved). ....	5
050. Conceptual Design Approval. ....	5
051. -- 099. (Reserved). ....	5
100. Permit And Permit Application. ....	6
101. -- 199. (Reserved). ....	8
200. Requirements For Water Quality Protection. ....	8
201. -- 299. (Reserved). ....	9
300. Application Processing Procedure. ....	9
301. -- 399. (Reserved). ....	10
400. Public Involvement In Permit Procedures. ....	10
401. -- 449. (Reserved). ....	11
450. Final Permit Decision. ....	11
451. -- 499. (Reserved). ....	12
500. Permit Conditions. ....	12
501. -- 649. (Reserved). ....	13
650. Financial Assurance. ....	13
651. -- 749. (Reserved). ....	16
750. Permit Modification. ....	16
751. -- 799. (Reserved). ....	16
800. Transfer Of Permits. ....	16
801. -- 849. (Reserved). ....	16
850. Permit Revocation. ....	16
851. -- 899. (Reserved). ....	16
900. Violations. ....	16
901. -- 949. (Reserved). ....	17
950. Public And Confidential Information. ....	17
951. -- 995. (Reserved). ....	17
996. Administrative Provisions. ....	17
997. Confidentiality Of Records. ....	17
998. Inclusive Gender And Number. ....	18
999. Severability. ....	18

**IDAPA 16  
TITLE 01  
Chapter 13**

**16.01.13 - RULES FOR ORE PROCESSING BY CYANIDATION**

**000. LEGAL AUTHORITY.**

Title 39, Chapter 1, Idaho Code, grants the authority to the Board of Health and Welfare to adopt rules, regulations and standards to protect the environment and the health of the State; grants authority to the Director to issue permits as prescribed by law and by the rules of the Board; and requires Department of Health and Welfare review and approval of plans and specifications for all new facilities, or for modifications or expansions to existing facilities, that process ore by cyanidation; and authorizes the Director to require a reasonable fee for processing permit applications and to require financial assurance for permanent closure. (1-1-88)

**001. TITLE, SCOPE AND INTENT.**

**01. Title.** These rules shall be known as Idaho Department of Health and Welfare Rules, IDAPA 16.01.13, "Rules for Ore Processing by Cyanidation". (1-1-88)

**02. Scope And Intent.** These rules establish the procedures and requirements for the issuance and maintenance of a permit to construct, operate and close that portion of an ore processing facility which utilizes cyanidation and is intended to contain, treat or dispose process water or process-contaminated water containing cyanide. The provisions of these rules also establish requirements for water quality protection which address performance, construction, operation and closure of that portion of any ore processing facility that is intended to contain, treat, or dispose process water or process-contaminated water containing cyanide. These rules are intended to ensure that process water and process-contaminated water generated in ore processing operations that utilize cyanide as a primary leaching agent and pollutants associated with the cyanidation process are safely contained, controlled, and treated so that they do not interfere with the beneficial uses of the waters of the state and do not endanger public safety or the environment. (12-31-91)

**002. DEFINITIONS.**

**01. Beneficial Use.** Any of the various uses which may be made of the surface and/or ground water of the state including, but not limited to, domestic water supplies, industrial water supplies, agricultural water supplies, navigation, recreation in and on the water, wildlife habitat, and aesthetics. Beneficial uses for specific stream segments are established in Idaho Department of Health and Welfare Rules, IDAPA 16.01.02, "Water Quality Standards and Wastewater Treatment Requirements". (1-25-95)

**02. Cyanidation.** A method of extracting metals from ores by treatment with a cyanide solution, which is the primary leaching agent for extraction. (1-1-88)

**03. Department.** The Idaho Department of Health and Welfare. (1-1-88)

**04. Director.** The Director of the Department of Health and Welfare or his designee. (12-31-91)

**05. Discharge.** When used without qualification, the release of process water, process-contaminated water, chemicals, or other potential pollutants into the surface waters and/or ground waters of the State. (1-1-88)

**06. Existing Facility.** Any facility engaged in commercial cyanidation within one (1) year prior to the original effective date of these rules; any portion of a facility under construction prior to the original effective date of these rules; or, any portion of a facility under construction within three (3) months after the effective date of these rules, and in accordance with Department approved engineering plans and specifications. (7-1-97)

**07. Facility.** For the purpose of these rules, a facility means that portion of an ore processing operation which utilizes cyanidation and which is intended to contain, treat, or dispose process water or process-contaminated water containing cyanide. (7-1-97)

**08. Free Cyanide.** The sum of cyanide present as undissociated molecular hydrogen cyanide (HCN)

and the cyanide ion (CN<sup>-</sup>), expressed as cyanide (CN). (1-1-88)

- 09. Groundwater.** Subsurface water comprising the zone of saturation including perched groundwater. (1-1-88)
- 10. Impoundment.** For the purpose of these rules an impoundment means a structure such as a pond, reservoir, tank, or vat that collects and confines liquids or slurries. (7-1-97)
- 11. Land Application.** A process or activity involving application of process water, process-contaminated water, wastewater, surface water, or semi-liquid material to the land for the purpose of disposal, pollutant removal, or groundwater recharge. (1-1-88)
- 12. Liner.** A continuous layer of natural or man-made materials beneath and, if applicable, on the sides of a surface impoundment or leach pad which restricts the downward and lateral escape of liquids. (1-1-88)
- 13. Permanent Closure.** Final cessation of operations. (1-1-88)
- 14. Permit.** When used without qualification, any written authorization by the Director, issued pursuant to the application, public participation and appeal procedures in these rules, governing location, operation and maintenance, monitoring, seasonal and permanent closure, discharge response, and design and construction of a new facility or a material expansion or material modification to a facility. (7-1-97)
- 15. Permittee.** The person in whose name a permit is issued and who is to be the principal party responsible for compliance with these rules and the conditions of a permit. (7-1-97)
- 16. Person.** An individual, corporation, partnership, association, state, municipality, commission, federal agency, special district or interstate body. (1-1-88)
- 17. Pilot Facility.** (7-1-97)
- a. A testing facility that is constructed primarily to obtain data on the effectiveness of the benefaction process to determine: (7-1-97)
- i. The feasibility of metals recovery from an ore; or (7-1-97)
- ii. The optimum operating conditions for a predetermined process to extract values from an ore. (7-1-97)
- b. A pilot or testing facility operates for one (1) year for a single test or two (2) years for multiple tests, during which time no more than ten thousand (10,000) tons of ore are evaluated for the testing process(es), unless the applicant can demonstrate that a greater amount is necessary for a specific purpose in the testing process. (7-1-97)
- 18. Pollutant.** Chemicals, chemical waste, process water, process-contaminated water, biological materials, radioactive materials, or other materials which, when discharged cause or contribute adverse effects to any beneficial use. (1-1-88)
- 19. Seasonal Closure.** Annual cessation of operations that is due to weather. (1-1-88)
- 20. Small Mineral Processing Facility.** A facility which chemically processes less than thirty-six thousand five hundred (36,500) tons of ore per year and no more than one hundred twenty thousand (120,000) tons of ore for the life of the project at any one (1) permitted site. No person or applicant may concurrently hold more than one (1) small mineral processing facility permit, if located within ten (10) miles of each other. (7-1-97)
- 21. Special Resource Water.** Those waters of the state which are recognized as needing intensive protection: (1-1-88)

- a. To preserve outstanding or unique characteristics; or (1-1-88)
- b. To maintain current beneficial use (refer to Idaho Department of Health and Welfare Rules, IDAPA 16.01.02, "Water Quality Standards and Wastewater Treatment Requirements," for a complete description; special resource waters for specific stream segments are established in Idaho Department of Health and Welfare Rules, IDAPA 16.01.02, "Water Quality Standards and Wastewater Treatment Requirements"). (1-25-95)
- 22. State.** The state of Idaho. (12-31-91)
- 23. Temporary Closure.** Any cessation of operations exceeding thirty (30) days, other than seasonal or permanent. (1-1-88)
- 24. Treatment.** Any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of a waste for the purpose of disposal. (1-1-88)
- 25. Waters Of The State.** All the accumulations of water, surface and underground, natural and artificial, public or private, or parts thereof which are wholly or partially within, which flow through or border upon the state. (12-31-91)
- 26. Weak Acid Dissociable Cyanide.** The sum of free cyanide and all but the most refractory metal-cyanide complexes, such as the iron, gold, cobalt, and platinum cyanides. (1-1-88)

**003. -- 009. (RESERVED).**

**010. APPLICABILITY TO EXISTING FACILITIES.**

**01. Registration Requirement.** Except as expressly provided in these rules, an existing facility shall not be subject to these rules if the owner or operator of such a facility registers with the Department within three (3) months after the original effective date of these rules. Nothing in this section shall be construed to deny the owner or operator of an existing facility the opportunity to apply for, and receive, a permit under these rules. (1-1-88)

**02. Registration Form.** Registration of an existing facility shall include the following, and items in Subsections 010.02.k., 010.02.n., 010.02.p., and 010.02.q. shall be in sufficient detail for the Director to determine, in the future, if a registered existing facility has been materially modified or materially expanded without a valid permit under these rules: (12-31-91)

- a. Name, location and mailing address of the facility; (1-1-88)
- b. Name, phone number and mailing address of the facility owner or operator, and the registered agent; (1-1-88)
- c. Land ownership status of the facility (federal, state, private or public entity); (1-1-88)
- d. Legal structure of the owner or operator (corporation, partnership, etc.); (1-1-88)
- e. Facility layout, topographic map with plan view of the facility; (1-1-88)
- f. Wells, irrigation ditches and drainages within one (1) mile radius of the facility (shown on topographic map); (1-1-88)
- g. Existing water quality monitoring and leak detection, including number, monitoring frequency and location of wastewater surface water and groundwater monitoring sites (shown on topographic map); (1-1-88)
- h. Project access; (1-1-88)
- i. Estimated facility life; (1-1-88)

- j. Operating season; (1-1-88)
- k. Ore processing rate (tons/day); (1-1-88)
- l. Process solution flow rate (gal./day); (1-1-88)
- m. Water supply source, location and peak demand; (1-1-88)
- n. General description of steps involving cyanidation including: (1-1-88)
  - i. Leaching cycle (time); and (1-1-88)
  - ii. Process waste (spent ore and/or excess process water) treatment and disposal method, location, volume and area; (1-1-88)
- o. Water management system(s), including determination of overall water balance; (1-1-88)
- p. Storage capacity of all process impoundments and emergency impoundments, and the total free-board storage in excess of total operating requirements; (1-1-88)
- q. Total pad, pond and lined areas including basic design and materials to be used. (1-1-88)

**03. Verification Of Registration.** Registration under this section shall be subject to on-site verification by the Director, and shall be based upon the truth and accuracy of the information provided on the registration form. (1-1-88)

**04. Public Notice.** No public notice of registration is required. (1-1-88)

**05. False Information.** Submission of false information or the material omission of information without reasonable investigation for purposes of registration under this section shall be cause for the Director to require an existing facility to apply for, and obtain, a permit under these rules. (1-1-88)

**011. -- 049. (RESERVED).**

**050. CONCEPTUAL DESIGN APPROVAL.**

**01. Information Required For Conceptual Design Approval.** Submittal of a Conceptual Design Report is not mandatory. The Director may, if requested, give initial approval of the basic operation, design concepts, and environmental safeguards proposed based on the information included in a Conceptual Design Report. Approval of the Conceptual Design Report shall not authorize the construction, modification or operation of the facility. The Conceptual Design Report shall consist of the following: (1-1-88)

- a. Requirements for a permit application as listed in Subsections 100.03.a. through 100.03.f. (12-31-91)
- b. A general description of the operating plan, processing facility and conceptual designs. (1-1-88)

**02. Notice Of Conceptual Design Approval Or Disapproval.** The Director shall notify the applicant in writing of the decision for conceptual approval or disapproval within a period of thirty (30) days from receiving all information as required under Subsection 050.01. (12-31-91)

**03. Preapplication Conference.** Prospective applicants are encouraged to meet with agents of the Department well in advance to discuss siting and operating plans, anticipated application requirements, application procedures, and to arrange for a site visit. (1-1-88)

**051. -- 099. (RESERVED).**

**100. PERMIT AND PERMIT APPLICATION.**

**01. Permit Required.** No person shall construct a new facility prior to obtaining a permit from the Director. No person shall materially expand or materially modify a new or existing facility prior to obtaining a permit for such expansion or modification. (1-1-88)

**02. Permit Application.** The owner or operator of a proposed facility or the owner's or operator's authorized representative shall make application to the Director in writing and in a manner or form prescribed herein. (1-1-88)

**03. Contents Of Application.** A permit application will be used to determine if the location, construction, operation, and closure of a proposed facility will be in conformance with these and other applicable rules including, but not limited to Idaho Department of Health and Welfare Rules, IDAPA 16.01.02, "Water Quality Standards and Wastewater Treatment Requirements," and Idaho Department of Health and Welfare Rules, IDAPA 16.01.08, "Idaho Rules for Public Drinking Water Systems". Information required shall include the following, in sufficient detail to allow the Director to make necessary application review decisions concerning design concept, environmental protection and public health: (7-1-97)

- a. Name, location, and mailing address of the facility. (1-1-88)
- b. Name, mailing address, and phone number of the applicant, and a registered agent. (1-1-88)
- c. Land ownership status of the facility (federal, state, private or public). (1-1-88)
- d. The legal structure (corporation, partnership, etc.) and residence of the applicant. (1-1-88)
- e. A surface and subsurface description, except as provided in Subsection 100.04 of these rules, of the proposed facility site to characterize the local hydrogeologic regime. (7-1-97)
- f. A topographic site map and or aerial photos, except as provided in Subsection 100.04 of these rules, extending at least one (1) mile beyond the outer limits of the facility site, identifying and showing the location and extent of the following features: (7-1-97)
  - i. All wells, springs, wetlands, surface waters and irrigation ditches within one (1) mile of the site boundary; (1-1-88)
  - ii. All process water supply source(s); (1-1-88)
  - iii. All public and private drinking water supply source(s) within at least one (1) mile of the site boundary; (1-1-88)
  - iv. All USGS identified floodplain areas (as shown on USGS sectional Quadrangle maps); (1-1-88)
  - v. All service roads and public roads; (1-1-88)
  - vi. All buildings and structures within a half (1/2) mile of the site boundary; (1-1-88)
  - vii. All special resource waters within one (1) mile of the site boundary. (1-1-88)
- g. Topographic maps and/or aerial photos and an engineering report with drawings, except as provided in Subsection 100.04 of these rules, showing locations and design of those portions of the facility intended to contain, treat, or dispose process water or process-contaminated water containing cyanide. This information shall be of sufficient detail to allow the Director to make necessary factual determinations concerning design competence and environmental protection and include: a drawing which shows surface gradients and flow of process solutions, predicted flow of runoff and run-on; design criteria and process schematic; leach pad and pond cross sections; typical details of liner systems for pads, ponds and process-related impoundments; treatment process schematics; and leak detection/monitoring system details. The facility design shall be certified by a registered professional engineer. Any

material modifications to the engineering drawings shall require prior approval by the Department and submittal of as built drawings by the applicant which are certified by a registered professional engineer. These rules recognize the need for practicable design flexibility in order to meet site specific operating and environmental protection criteria. Construction and material specifications that meet design criteria shall be submitted with the permit application. These shall address major construction requirements related to materials of construction identified in the engineering report, inspection and testing requirements (including liners), and necessary manufacturer certifications. Construction specifications shall include a quality assurance procedure for liner installations and a procedure for leak testing of impoundments. (7-1-97)

- h. An operating plan, except as provided in Subsection 100.04 of these rules, that includes: (7-1-97)
- i. The general ore processing overview; (1-1-88)
- ii. The process containment, treatment and disposal methods to be used; (1-1-88)
- iii. A water management strategy that describes the process water balance and the methods to manage all process water, process-contaminated water, and runoff or run-on water, emergency releases, and excess water due to flood, rain, snowmelt, or other similar events. The strategy shall include the basis for impoundment volumes and all estimations. Nothing in these rules shall be construed to deny the owner or operator of a facility the opportunity to apply for and receive a federal discharge permit or an Idaho Department of Water Resources injection well permit as part of the water management strategy. In addition the strategy may include a request for approval of a land application proposal or a proposal for economic reuse. (7-1-97)
- iv. A monitoring strategy that describes the existing water quality (baseline), proposed monitoring of surface and ground waters that may receive drainage or seepage from the operation (operational), and proposed monitoring for detection and location of leaks or discharges from the operation. (1-1-88)
- v. A discharge response strategy that describes procedures and methods to be implemented for the abatement, and clean up of any pollutant that may escape proper containment at the facility. (1-1-88)
- vi. A seasonal closure strategy, if applicable, that describes the procedures, methods, and schedule to be implemented for the treatment and disposal of process water, the control of drainage from the facility during the period of closure, the control of drainage from the surrounding area, and the secure storage of chemicals. (1-1-88)
- i. A permanent closure plan that describes the procedures, methods, and schedule to be implemented at the facility for the treatment and disposal of process water and process-contaminated water and the control and monitoring of discharges and potential discharges for a reasonable period of time based on site-specific conditions. (1-1-88)
- j. The application shall be accompanied by a fee of one hundred dollars (\$100). (1-1-88)

**04. Application For A Small Mineral Processing Facility And Pilot Facility.** The owner or operator of a proposed facility or the owner's or operator's authorized representative shall make application to the Director in writing of the intent to operate a small mineral processing facility or a pilot facility. The application shall include an explanation as to why the proposed facility qualifies as a small mineral processing facility or a pilot facility. The application must further meet the requirements of Subsection 100.03 in the following manner: (7-1-97)

- a. The application must contain plans and specifications certified by a registered professional engineer in accordance with Section 39-118A, Idaho Code; and (7-1-97)
- b. The application must contain the information and fee required by Subsections 100.03.a., 100.03.b., 100.03.c., 100.03.d., 100.03.i., and 100.03.j.; and (7-1-97)
- c. The Director may provide an exemption to any other requirement of Subsection 100.03 not set forth in Subsections 100.04.a. and 100.04.b., if by so doing, the Director has sufficient information to determine potential impacts to the environment, public health or current or future beneficial uses of the waters of the state. (7-1-97)

101. -- 199. (RESERVED).

**200. REQUIREMENTS FOR WATER QUALITY PROTECTION.**

The following minimum design and performance standards are intended as a baseline for protection of public health and for the waters of the state. These standards shall apply to all facilities unless the Director approves, based on an applicant's site specific information that compliance with a specific standard is not required to protect water quality and the public health. (1-1-88)

**01. Containment Design Criteria.** A facility shall be designed to contain the maximum expected normal operating water balance and the one hundred (100) year, twenty-four (24) hour storm event. Snowmelt events shall be considered in determining the containment capacity. Contingency plans for managing excesses of process water or process-contaminated water shall be described in the water management strategy. (1-1-88)

**02. Impoundment Design.** Impoundments, other than for emergency runoff, containing or designed to contain process water shall be designed for efficient leak detection and provide for adequate leak recovery. This requirement does not apply to tailing structures more than thirty (30) feet in height which are regulated by the Idaho Department of Water Resources under Chapter 17, Title 42, Idaho Code. (1-1-88)

**03. Liner Criteria.** A hydraulic liner is required for leach pads and impoundments and shall: (1-1-88)

a. Be designed for a maximum coefficient of permeability of  $10^{-7}$  cm/sec; a clay liner shall also have a minimum thickness of twelve (12) inches; (1-1-88)

b. Have a competent foundation designed to withstand the projected static and dynamic loading and projected differential settlement; (1-1-88)

c. Be structurally competent at all times until permanent closure; (1-1-88)

d. Be chemically compatible with materials contacting the liner; (1-1-88)

e. Be designed to prevent damage during loading and unloading; (1-1-88)

f. Where appropriate, ensure minimal hydraulic head above the liner. (1-1-88)

**04. Water Quality Monitoring.** A ground water and/or surface water monitoring program shall be required for a facility. The monitoring program shall be dependent on location, design and operation of the facility, and shall be capable of indicating the facility's effect on the surface and/or ground water most likely to be affected by the operation. The monitoring program shall be designed to give the earliest possible detection of an unauthorized discharge. (1-1-88)

**05. Disposal Or Abandonment Of Leached Ore.** Disposal or abandonment of the leached ore shall ensure that: (1-1-88)

a. The concentration of weak acid dissociable cyanide or free cyanide and other pollutants associated with cyanidation in process-contaminated water draining from the leached ore is reduced to a level that is based on the disposal method, location and the potential for ground water and surface water contamination, or the pH of process-contaminated water draining from the leached ore is stabilized to a pH between six point five (6.5) and nine (9.0), prior to disposal or abandonment. Mine tailing impoundments that require recycling of process water to prevent a point source discharge may be exempt from this requirement by the director; (1-1-88)

b. Structural stability of the spent-ore pile is maintained; (1-1-88)

c. Monitoring of the surface and ground water is conducted to verify that beneficial uses are maintained. (1-1-88)

**06. Seasonal Closure.** Prior to seasonal closure, the freeboard in process water impoundments shall be increased to a level sufficiently below normal operating volume to ensure containment design criteria. The



concentration of weak acid dissociable cyanide or free cyanide and other pollutants associated with cyanidation in process or process-contaminated water shall be reduced to a level that is based on the disposal method, location and the potential for ground water and surface water contamination; or prior to disposal, process water shall be treated to a pH between six point five (6.5) and nine (9.0). (1-1-88)

**07. Storage Requirements.** Cyanide compounds in storage shall be physically separated and protected from other substances, such as acids and strong oxidants, that are not chemically compatible. (1-1-88)

**08. Employee Education Program.** The permittee shall demonstrate that a program of new employee orientation and continuing employee education is being implemented and maintained. The program shall be designed to ensure awareness and implementation of the discharge response strategy. (1-1-88)

**201. -- 299. (RESERVED).**

**300. APPLICATION PROCESSING PROCEDURE.**

**01. Substantially Incomplete Applications.** An application which does not, on its face, include all the requirements of Subsection 100.03, except as provided in Subsection 100.04 of these rules, will be returned to the applicant with a written list of the missing items. (7-1-97)

**02. Decision.** (12-31-91)

a. Except as provided in Subsection 300.01, within sixty (60) days of receipt of an application for a new permit or to modify an existing permit, the Director shall issue to the applicant a notice of intent to deny or draft a permit. Except as provided in Subsection 300.01, within thirty (30) days of receipt of an application for a small mineral processing facility or a pilot facility, the Director shall issue to the applicant a notice of intent to deny or draft a permit. (7-1-97)

b. The Director may suspend the running of the sixty (60) or thirty (30) day period for no more than thirty (30) days by requesting more detailed information necessary to ensure completeness and accuracy of an application, or the applicant may suspend the running of the sixty (60) or thirty (30) day period by written request to the Director. Upon receipt of the required information by the Director, the sixty (60) or thirty (30) day period will resume. (7-1-97)

c. A notice of intent to deny the permit application shall follow the same procedures as a draft permit issued under this section. (12-31-91)

**03. Basis For Permit Denial.** The Director shall deny a draft or final permit if: (1-1-88)

a. The application is inaccurate or incomplete; (1-1-88)

b. The facility as proposed cannot be conditioned for construction, operation, and closure to protect beneficial uses of the waters of the state. (1-1-88)

**04. Fact Sheet.** The Director shall prepare a fact sheet, for each denial or draft permit, which briefly states the principal facts and the significant legal and policy questions considered in the Director's decision. The fact sheet shall include, when applicable: (1-1-88)

a. A brief description of the proposed facility and the operating plan. (1-1-88)

b. A brief summary of the basis for the decision, including references to applicable requirements and supporting materials. (1-1-88)

c. Reasons why any requested conditions or alternatives to required standards do or do not appear justified. (1-1-88)

d. A description of the procedures for reaching a final decision, including: (1-1-88)

- i. The beginning and ending dates of the public comment period; (1-1-88)
- ii. The address where comments will be received during the comment period; (1-1-88)
- iii. Any other procedures by which the public may participate in the final decision; (1-1-88)
- e. The name and phone number of the agency representative to contact for additional information. (1-1-88)

**301. -- 399. (RESERVED).**

**400. PUBLIC INVOLVEMENT IN PERMIT PROCEDURES.**

**01. Public Notice Of Permit Actions.** No public notice is required when a request for a permit modification or revocation is denied. The Director shall give public notice of: (1-1-88)

- a. Receipt of an application for a permit; (1-1-88)
- b. Any public meeting scheduled; (1-1-88)
- c. Issuance of a draft permit or a decision to deny the application for a permit; (1-1-88)
- d. An appeal that has been granted. (1-1-88)

**02. Public Notice Information.** All public notices shall contain the name and address of the Department's office processing the permit action, where the application and draft permit will be available for public review, and a brief description of the public involvement procedures. (1-1-88)

**03. Serving The Public Notice.** Public notice of permit actions shall be given by the following methods: (1-1-88)

- a. By mail to: (1-1-88)
  - i. The applicant; (1-1-88)
  - ii. Persons on a mailing list who request to be notified; (1-1-88)
  - iii. Other appropriate government authorities; (1-1-88)
- b. Publication in a daily or weekly major newspaper of general circulation in the area of the proposed facility; (1-1-88)
- c. Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected. (1-1-88)

**04. Public Comment And Public Meetings.** (7-1-93)

a. Oral or written comments may be submitted by any person at a public meeting. Such meeting may be held prior to a draft permit or notice of intent to deny a permit, if the Director finds twenty-five (25) individuals, or one (1) organization representing twenty-five (25) or more members, who request a public meeting based on a water quality issue and related to the technical merits of the application. The request shall be made in writing within ten (10) days following public notice of a receipt of an application for a permit. The meeting may be presided by agency personnel appointed by the Director. Any person wishing to submit oral comments must sign up prior to the meeting. Oral commentaries will receive equal time to submit oral comments. To be considered in the final decision, oral comments must be submitted in writing within five (5) days following the public meeting. (1-1-88)

- b. Within thirty (30) days of public notice of a draft permit or decision to deny an application for a

permit, any person may submit written comments to the Department on issues raised in the notice, draft permit or decision to deny a permit. Pursuant to Section 39-106, Idaho Code, the Director has inherent authority to take oral comment on a draft permit at his discretion. (1-1-88)

- c. All written comments shall be considered by the Director in making the final decision. (1-1-88)

**401. -- 449. (RESERVED).**

**450. FINAL PERMIT DECISION.**

**01. Issuing The Decision.** Within thirty (30) days after the close of the written public comment period on a draft permit, the Director shall issue a final permit decision. The Director shall notify the applicant and each person who requested notice of the final permit decision. This notice shall include reference to the procedures for administrative appeal under Section 996. For the purpose of this section, a final permit decision means a final decision to issue, deny, modify, or revoke a permit. (1-25-95)

**02. Response To Public Comments.** All written comments and information received during the comment period, together with the Department's final permit and the response to relevant written comments shall be made available to the public. This response shall: (1-1-88)

- a. Specify any differences between the final permit and the draft permit and state the reasons for those differences; (1-1-88)
- b. Briefly describe and respond to all relevant written comments on the draft permit or denial. (1-1-88)

**03. Immediate Effect Of The Permit.** A valid permit authorizes the construction and operation of a cyanidation facility. (1-1-88)

**04. Duration Of Permit.** A permit shall remain valid until the Director determines permanent closure is completed, or until such time as the permit is revoked or modified. (1-1-88)

**05. Duration Of A Small Mineral Processing Facility Permit.** A permit for a small mineral processing facility shall remain valid only until the Director determines: (7-1-97)

- a. Permanent closure is completed; or (7-1-97)
- b. The lifetime allotment of one hundred twenty thousand (120,000) tons of processed ore is reached; or (7-1-97)
- c. The facility no longer qualifies as a small mineral processing facility; or (7-1-97)
- d. One (1) person or applicant concurrently holds more than one (1) permit for a small mineral processing facility where the facilities are located within ten (10) miles of each other; or (7-1-97)
- e. Operations must cease, temporarily or permanently, due to a violation of the Idaho Department of Health and Welfare Rules, IDAPA 16.01.02, "Water Quality Standards and Wastewater Treatment Requirements," or adverse impacts to the beneficial uses of the water of the state; or (7-1-97)
- f. To revoke or modify the existing permit. (7-1-97)

**06. Duration Of The Pilot Facility Permit.** The permit to operate a pilot facility is valid: (7-1-97)

- a. For one (1) year from date of issuance for a facility conducting a single test; or (7-1-97)
- b. For two (2) years from date of issuance for a facility conducting multiple tests; or (7-1-97)

- c. Until revoked or modified by the Department; or (7-1-97)
- d. Until the facility no longer qualifies as a pilot facility. (7-1-97)

**451. -- 499. (RESERVED).**

**500. PERMIT CONDITIONS.**

The following conditions shall apply to and be specified in all permits: (1-1-88)

**01. Compliance Required.** The permittee shall comply with all conditions of the permit. However, the permit shall not relieve the permittee of the responsibility to comply with all other applicable local, state, and federal laws. (1-1-88)

**02. Construction And Operation Of Facility.** The permittee shall ensure that construction, operation and maintenance of the facility proceed according to the approved design plans and specifications and the approved operating and closure plans. (1-1-88)

**03. As-Built Plans And Specifications.** Complete and accurate record drawings and specifications, signed by a registered, professional engineer depicting actual construction shall be submitted by the permittee to the Director within thirty (30) days after the completion of the construction. Alternatively, if the construction proceeded in substantial compliance with the approved plans and specifications, a statement to the effect may be submitted by the registered, professional engineer. (1-1-88)

**04. Provide Information.** The permittee shall furnish to the Director within a reasonable time, any information including copies of records required by the permit or other applicable rules, which the Director may reasonably require to determine whether cause exists for modifying or revoking the permit or to determine compliance with the permit or other applicable rules. (1-1-88)

**05. Notifications.** After construction, seasonal and temporary closure, the permittee shall within seven (7) days provide written notice to the Director of operation start-ups. The permittee shall provide written notice sufficient to allow the Director to inspect all seasonal, temporary and permanent closures. (1-1-88)

**06. Entry And Access.** The permittee shall allow the Director, or a designee obligated by agreement with the Director to comply with the confidentiality provisions of Section 39-111, Idaho Code, to: (1-1-88)

- a. Enter at reasonable times upon the premises of a permitted facility or where records required by a permit are kept; (1-1-88)
- b. Have access to and copy at reasonable times any records that must be kept under the conditions of the permit; (1-1-88)
- c. Inspect at reasonable times any facility, equipment, practice, or operation permitted or required by the permit; (1-1-88)
- d. Sample or monitor at reasonable times, substance(s) or parameter(s) directly related to permit or regulation compliance. (1-1-88)

**07. Reporting.** It shall be the permittee's responsibility to report to the Director: (1-1-88)

a. Orally, as soon as possible but no later than twenty-four (24) hours from the time the permittee knows or should reasonably know of any noncompliance which may endanger the public health or the environment. (1-1-88)

b. In writing, within five (5) working days from the time a permittee knows or should reasonably know of any event which may be or which may result in a violation of these rules, or Idaho Department of Health and Welfare Rules, IDAPA 16.01.02, Sections 000, et seq., "Water Quality Standards and Wastewater Treatment Requirements". This report shall contain: (12-31-91)

- i. A description of the event and its cause; if the cause is not known, steps taken to investigate and determine the cause; (1-1-88)
- ii. The period of the event including, to the extent possible, times and dates; (1-1-88)
- iii. Measures taken to mitigate or eliminate the event and protect the public health; (1-1-88)
- iv. Steps taken to prevent recurrence of the event; (1-1-88)
- c. In writing, confirmation of any conditions which may result in violation of any permit condition; (1-1-88)
- d. In writing, when the permittee knows or should reasonably know of material relevant facts not submitted or incorrect information submitted in a permit application or any report or notice to the Director or the Department. Those facts or the correct information shall be included as a part of this report. (1-1-88)

**08. Discharge Response.** If an unauthorized discharge occurs the permittee shall: (1-1-88)

- a. Report the event(s) pursuant to the reporting requirements under Subsection 500.07 of this section; (1-1-88)
- b. Implement the approved discharge response strategy. (1-1-88)

**09. Temporary Closure Plan.** In the event of temporary closure, the permittee shall submit a temporary closure plan to the Director for approval. The plan shall describe the procedures, methods, and schedule to be implemented for the treatment and disposal of process water, the control of drainage from the facility, the control of drainage from the surrounding area, and the secure storage of chemicals during the period of closure. Within thirty (30) days of receiving the plan, the Director shall approve and/or suggest modifications necessary to protect the waters of the State. The permittee shall ensure that closure complies with an approved plan. In no case shall the permittee complete temporary closure prior to implementation of the approved plan. (1-1-88)

**10. Begin Construction.** If the permittee fails to begin construction of a facility within two (2) years of the effective date of the permit, the Director may void the permit and require a new application. (1-1-88)

**501. -- 649. (RESERVED).**

**650. FINANCIAL ASSURANCE.**

**01. Financial Assurance Required.** Prior to commencing cyanidation operations an applicant shall establish financial assurance for permanent closure of the facility meeting the requirements of these rules. (1-1-88)

**02. Amount.** The amount of financial assurance shall be determined by multiplying five cents (\$.05) by the number of tons of untreated processed ore and the projected number of tons to be leached with cyanide within the next calendar year, unless the permittee requests an amount based on a projection for more than one (1) year; however, the minimum amount of financial assurance shall be the sum of twenty-five thousand dollars (\$25,000) and the maximum amount shall be the sum of one hundred thousand dollars (\$100,000). (1-1-88)

a. The amount of financial assurance shall be reviewed on an annual basis. The permittee shall submit in writing on or before December 1 each year the number of tons of untreated processed ore and the projected number of tons to be leached with cyanide for the succeeding calendar year. (1-1-88)

b. In the event there is a material change in the tons of ore leached with cyanide over the tons of ore projected under Subsection 650.02.a., the permittee shall submit written notification to the Department of the change and an adjustment will be made accordingly. (12-31-91)

**03. Form.** An applicant may comply with the financial assurance requirements of these rules through

- one (1) or more of the following options: (1-1-88)
- a. A corporate surety bond evidenced by an indemnity agreement, executed by or for the applicant and a corporate surety, and payable to the Department. Corporate surety bonds shall be subject to the following conditions: (1-1-88)
    - i. The Department shall obtain possession of the bond. (1-1-88)
    - ii. The bond shall be conditioned upon the applicant's adequate performance of permanent closure under an approved closure plan. (1-1-88)
    - iii. The bond shall be on a form supplied by the Department. (1-1-88)
    - iv. The corporate surety shall be licensed to do business in the United States. (1-1-88)
  - b. A collateral bond evidenced by an indemnity agreement, executed by or for the applicant and payable to the Department, pledging cash deposits, negotiable bonds of the United States, this State or political subdivisions of this State, or negotiable certificates of deposit of any bank doing business in the United States. Collateral bonds shall be subject to the following conditions: (1-1-88)
    - i. The Department shall obtain possession, and upon receipt of such collateral bonds, deposit them with the State Treasurer to hold in trust for the purpose of bonding permanent closure. (1-1-88)
    - ii. The Department shall value collateral at current market value, not face value. (1-1-88)
    - iii. Certificates of deposit shall be issued in the name of "principal or Idaho Department of Health and Welfare", in writing and upon the records of the bank issuing such certificates. Interest may be allowed to accrue and received upon release of the bond, or be paid to the principal no more than semiannually. (1-1-88)
    - iv. Banks issuing certificates of deposit shall waive all rights of set-off, or liens which it has or might have against such certificates. (1-1-88)
    - v. All certificates of deposit shall be automatically renewable. (1-1-88)
    - vi. All certificates of deposit shall be of sufficient amount to ensure that the Department may liquidate such certificates, upon forfeiture, for the amount of the required bonding, including penalty for early withdrawal. (1-1-88)
  - c. A corporate surety or collateral bond payable to another state agency and the Department, or the federal government, and meeting the applicable bonding requirements of these rules. (1-1-88)
  - d. One (1) or more insurance policies issued under the following conditions: (1-1-88)
    - i. The applicant shall submit a certificate of insurance to the Department. (1-1-88)
    - ii. The policy shall be issued by a company licensed to do business in the United States. (1-1-88)
    - iii. The policy shall guarantee the amount determined under Subsection 650.02 to the Department for the performance of permanent closure if the applicant fails to perform permanent closure under an approved plan. (12-31-91)
    - iv. Termination, cancellation or nonrenewal of the policy may occur only if the Department receives ninety (90) days notice from the insurance company, and the Department consents or the policy premium is not paid by the permittee. Nonpayment of the premium constitutes a violation of the provisions of this section by the permittee. The Department shall consent to termination, cancellation or nonrenewal if the permittee substitutes alternative financial surety under this section, or completes permanent closure guaranteed by the policy under an approved plan. (1-1-88)

- e. A closure trust fund which conforms to the following conditions: (1-1-88)
  - i. The applicant shall submit a certificate of trustees acknowledgment and a signed duplicate trust agreement to the Department. (1-1-88)
  - ii. The trust agreement shall be substantially in the form appended to these rules as Appendix A, and shall guarantee payments by the trustee at the direction of the Department to implement an approved permanent closure plan if the permittee fails to adequately perform permanent closure under such a plan. (1-1-88)
  - iii. The trustee shall have authority to act as such and be regulated by a state or federal agency. (1-1-88)
  - iv. The applicant shall deposit cash in the full amount determined under Subsection 650.02 prior to commencing cyanidation operations. (12-31-91)
  - v. The trust agreement shall terminate if the permittee substitutes alternative financial surety under these rules, or the permittee completes permanent closure guaranteed by the trust fund under an approved plan. (1-1-88)

**04. Cancellation And Replacement Of Bonds.** (1-1-88)

- a. Any surety cancelling a bond shall give the Department and the bonded principal at least ninety (90) days notice prior to cancellation of an agreement. The Department shall not release a surety from liability under existing bonds until the permittee has submitted to the Department an acceptable replacement bond or other form of financial assurance under these rules. (1-1-88)
- b. If a surety cancels a bond or fails to maintain a valid license to do business in the United States, the permittee shall, within forty-five (45) days of notice from the Department, substitute a sufficient surety. A replacement bond or other financial assurance under these rules shall cover any liability accrued against the bonded principal at the facility in addition to the amount determined under Subsection 650.02. If the permittee fails to secure a replacement bond or other alternative financial assurance under these rules, the permittee shall cease operations at the facility covered by the bond until sufficient financial assurance is filed with the Department. (12-31-91)

**05. Release Of Financial Assurance.** Financial assurance, or a portion thereof, required under these rules may be released as follows: (1-1-88)

- a. If at any time the value of a bond, insurance or trust is greater than the total amount of financial assurance required under Subsection 650.02, the permittee may submit a written request to the Department for release of the amount in excess of the amount required under Subsection 650.02. (12-31-91)
- b. If the permittee substitutes alternative financial assurance under these rules for all or part of a bond, insurance or trust, the permittee may submit a written request to the Department for release of the amount in excess of the financial assurance required under Subsection 650.02. (1-1-88)
- c. Upon completion of permanent closure in accordance with an approved plan, the permittee may request release from financial assurance by the Department. If the Department determines that permanent closure is in accordance with an approved plan financial assurance shall be released. If the Department determines that a portion of permanent closure has been satisfactorily completed the Department may proportionately reduce the amount of financial assurance required and release the balance. (1-1-88)
- d. Within thirty (30) days after receiving a request from a permittee for release of a bond, insurance or trust, or any portion thereof, the Department shall either order release or provide the permittee with a detailed written statement of reasons why financial assurance will not be released. (1-1-88)

**06. Insufficiency.** In the event the amount of financial surety is insufficient to implement an approved permanent closure plan, the Department may commence legal action against the permittee to recover the amount

necessary to implement permanent closure under an approved plan and these rules. (1-1-88)

**651. -- 749. (RESERVED).**

**750. PERMIT MODIFICATION.**

**01. Cause For Permit Modification.** Causes for permit modification are: (1-1-88)

a. A material change or material expansion in the facility operation, design or closure plan. (1-1-88)

b. Natural phenomena substantially different from those anticipated in the original permit. (1-1-88)

**02. Modification At Request Of Permittee.** Requests for modification from the permittee shall include: (1-1-88)

a. A written description of the modification(s); (1-1-88)

b. Data supporting the modification request; (1-1-88)

c. Causes and anticipated effects of the modification. (1-1-88)

**03. Modification At Request Of Director.** Pursuant to Subsection 750.01, if the Director determines that cause exists for permit modification, the Director shall notify the permittee in writing and request information necessary for the Director to modify the permit. (12-31-91)

**04. Modification Procedure.** Permit modifications shall follow the application processing, public involvement, and administrative appeal procedures of these rules. (1-1-88)

**751. -- 799. (RESERVED).**

**800. TRANSFER OF PERMITS.**

A permit may be automatically transferred to a new permittee if such permittee provides written notice to the Director containing a specific date for transfer of permit responsibility, coverage, and liability between the old and new permittees, no later than ten (10) days after the date of closure. (1-1-88)

**801. -- 849. (RESERVED).**

**850. PERMIT REVOCATION.**

**01. Cause For Revocation.** A material violation of a permit or these rules may be grounds for the Director to revoke a permit. A violation that is shown to have occurred as the result of an unforeseeable act of God despite a permittee's reasonable efforts to comply with all applicable legal requirements shall not be grounds for revocation. (1-1-88)

**02. Revocation Hearing.** If the Director decides to revoke a permit he shall issue a notice of intent which shall become final within twenty (20) days of service upon the permittee, unless the permittee requests in writing an administrative hearing. Written notice of the time and place of the hearing shall be mailed, at least twenty (20) days prior to the date set for the hearing, to the permittee. The hearing shall be conducted in accordance with Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, "Rules Governing Contested Cases and Declaratory Rulings". (12-31-91)

**851. -- 899. (RESERVED).**

**900. VIOLATIONS.**

**01. Failure To Comply.** Failure by a permittee to comply with the provisions of these rules or with any permit condition shall be deemed a violation of these rules. (1-1-88)



**02. Falsification Of Statements And Records.** It shall be a violation of these rules for any person to knowingly make a false statement, representation, or certification in any application, registration, report, document, or record developed, maintained, or submitted pursuant to these rules or the conditions of a permit. (1-1-88)

**03. Discharges.** Any unauthorized discharge shall be a violation of these rules. (1-1-88)

**901. -- 949. (RESERVED).**

**950. PUBLIC AND CONFIDENTIAL INFORMATION.**

**01. Public Inspection.** Except as provided in this section or other applicable law, information obtained or submitted pursuant to these rules will be available to the public for inspection and copying during normal working hours. Anyone requesting Department assistance in collecting, copying or mailing public information must tender, in advance, the reasonable cost of those services. (1-1-88)

**02. Trade Secrets Not Subject To Inspection.** Information concerning a pollution source and submitted to the Department pursuant to these rules which, as certified by the owner or operator of such source, relates to production or sales figures or to processes or production unique to the owner or operator, or tends to adversely affect the competitive position of such owner or operator, may be disclosed only to the Board, the Director and the Hearing Officer unless: (1-1-88)

- a. The Board, after a hearing, determines that a claim of uniqueness or adverse affect is unwarranted; (1-1-88)
- b. The owner or operator expressly consents to disclosure; or (1-1-88)
- c. Disclosure is required for prosecution of a violation of the Idaho Environmental Protection and Health Act. (1-1-88)

**03. Other Information Not Subject To Inspection.** The Department may decline to release to the public: (1-1-88)

- a. Inconclusive preliminary data or reports generated as part of ongoing studies; and (1-1-88)
- b. Information obtained as part of ongoing investigations when release would:
  - i. Interfere with enforcement proceedings; (1-1-88)
  - ii. Deprive a person of a fair or impartial adjudication; (1-1-88)
  - iii. Discourage informants from disclosing information to the Department; (1-1-88)
  - iv. Disclose investigative techniques or proceedings; or (1-1-88)
  - v. Endanger the safety of Department personnel. (1-1-88)

**951. -- 995. (RESERVED).**

**996. ADMINISTRATIVE PROVISIONS.** Contested case appeals shall be governed by Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, Subsection 000, et seq., "Rules Governing Contested Cases and Declaratory Rulings". (12-31-91)

**997. CONFIDENTIALITY OF RECORDS.** Any disclosure of information obtained by the Department is subject to the restrictions contained in Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Rules Governing the Protection and Disclosure of Department Records". (12-31-91)

**998. INCLUSIVE GENDER AND NUMBER.**

For the purposes of these rules, words used in the masculine gender include the feminine, or vice versa, where appropriate. (12-31-91)

**999. SEVERABILITY.**

Idaho Department of Health and Welfare Rules, IDAPA 16.01.13, "Rules for Ore Processing by Cyanidation," are severable. If any rule, or part thereof, or the application of such rule to any person or circumstance, is declared invalid, that invalidity does not affect the validity of any remaining portion of the chapter. (1-1-88)

# Subject Index

- A**  
Administrative Provisions 17  
Applicability To Existing Facilities 4  
Application For A Small Mineral Processing Facility And Pilot Facility 7  
Application Processing Procedure 9  
As-Built Plans And Specifications 12
- B**  
Basis For Permit Denial 9  
Begin Construction, Within Two Years 13  
Beneficial Use 2
- C**  
Cancellation And Replacement Of Bonds 15  
Cause For Permit Modification 16  
Cause For Revocation 16  
Conceptual Design Approval 5  
Confidentiality Of Records 17  
Construction And Operation Of Facility 12  
Containment Design Criteria 8  
Contents Of Application 6  
Cyanidation 2
- D**  
Definitions 2  
Department 2  
Director 2  
Discharge 2  
Discharge Response 13  
Discharges, Unauthorized 17  
Disposal Or Abandonment Of Leached Ore 8  
Duration Of A Small Mineral Processing Facility Permit 11  
Duration Of Permit 11  
Duration Of The Pilot Facility Permit 11
- E**  
Employee Education Program 9  
Entry And Access 12  
Existing Facility 2
- F**  
Facility 2  
Fact Sheet, Prepared By The Director 9  
False Information 5  
Falsification Of Statements And Records 17  
Final Permit Decision 11  
Financial Assurance 13  
Financial Assurance Required 13  
Free Cyanide 2
- G**  
Groundwater 3
- I**  
Immediate Effect Of The Permit 11  
Impoundment 3  
Impoundment Design 8  
Inclusive Gender And Number 18  
Information Required For Conceptual Design Approval 5  
Insufficiency, Financial Surety 15  
Issuing The Decision 11
- L**  
Land Application 3  
Legal Authority 2  
Liner 3  
Liner Criteria 8
- M**  
Modification At Request Of Director 16  
Modification At Request Of Permittee 16  
Modification Procedure 16
- N**  
Notice Of Conceptual Design Approval Or Disapproval 5
- O**  
Other Information Not Subject To Inspection 17
- P**  
Permanent Closure 3  
Permit 3  
Permit And Permit Application 6  
Permit Application 6  
Permit Conditions 12  
Permit Modification 16  
Permit Required 6  
Permit Revocation 16  
Permittee 3  
Person 3  
Pilot Facility 3  
Pollutant 3  
Preapplication Conference 5  
Public And Confidential Information 17  
Public Comment And Public Meetings 10  
Public Inspection 17  
Public Involvement In Permit Procedures 10  
Public Notice 5  
Public Notice Information 10  
Public Notice Of Permit Actions 10
- R**  
Registration Form 4  
Registration Requirement 4  
Release Of Financial Assurance 15  
Requirements For Water Quality Protection 8  
Response To Public Comments 11  
Revocation Hearing 16
- S**  
Seasonal Closure 3, 8  
Serving The Public Notice 10  
Severability 18  
Small Mineral Processing Facility 3  
Special Resource Water 3  
State 4  
Storage Requirements 9  
Substantially Incomplete Applications 9
- T**  
Temporary Closure 4  
Temporary Closure Plan 13  
Title, Scope And Intent 2  
Trade Secrets Not Subject To Inspection 17  
Transfer Of Permits 16  
Treatment 4
- V**  
Verification Of Registration 5  
Violations 16
- W**  
Water Quality Monitoring 8  
Waters Of The State 4  
Weak Acid Dissociable Cyanide 4