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June 19, 2020

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

Submitted via email: paula.wilson@deq.idaho.gov

Re: DEQ Negotiated Rulemaking – Ore Processing by Cyanidation
Docket No. 58-0113-1901 (Negotiated Rule Draft No. 7)

Dear Ms. Wilson:

The Idaho Mining Association (IMA) provides the following general and specific comments to the subject Rule Draft No. 7.

GENERAL COMMENTS

IMA appreciates IDEQ's efforts in modernizing the rules governing minimum design standards for cyanidation facilities to reflect best practices in the industry. There are a few remaining issues that need to be addressed as set forth below, but IMA is hopeful that these remaining issues can be resolved before submission of a proposed rule to the Board.

SPECIFIC COMMENTS

Hydraulic Head Requirement for Tailings. (Section 204)

We appreciate IDEQ's suggested revisions on limiting hydraulic head requirements in response to peer reviewed scientific papers on the liner integrity risks of overliner drains, and understand their concerns about excess free process water in contact with TSF liners. IMA believes both elements should be explicitly addressed in the Rule by some further revisions to Section 204, to avoid language that could encourage measures that sacrifice long-term performance in an effort to address transient conditions, and propose the following language:

204.01.

b. A system designed to limit hydraulic head over the geomembrane liner, where and when practical, while preserving the integrity and long-term performance of the liner system. A system designed to limit hydraulic head over the geomembrane liner to the maximum extent practicable: less than two feet on average and five (5) feet maximum. Lower heads shall be maintained, where practicable. Hydraulic head limits in this subsection shall be maintained after the deposition of the initial continuous layer of tailings within the tailings impoundment.

c. A system designed to reduce excess pore pressure within the tailings, concurrent to or following deposition, while preserving the integrity and long-term performance of the liner system; and

d. A plan for managing the depth, area, and volume of process water occurring above the tailings surface and in direct contact with liner, including thresholds and contingency measures to manage excess accumulation of free process water in the facility; and

d.e. Monitoring points that will provide for early detection of discharges of pollutants.

204.02

c. The degree to which the hydraulic head on the liner is minimized; The degree to which the measures proposed under 204.01.b. through 204.01.d. are expected to limit hydraulic head, reduce tailings excess pore pressure, preserve liner system integrity and long-term performance, and control free process water area and volume;

e. Area and volume of process water;

f.e. The depth from the surface to all ground water; and

g.f. The methods employed in depositing the impounded material; and

h.g. The proximity to surface water and the ground water interactions with surface water.

We believe that the proposed revisions above capture both IMA and IDEQ's concerns with the previous draft.

Permit Application (Section 100.03.r)

IMA appreciates IDEQ's recognition in the last draft rule that cyanidation facilities may be constructed over multiple years. The submission of final plans for all components of a multiple year project at the time of application is not practical for the applicant or for IDEQ. However, it is unnecessary to comment on the construction approval requirements as they are redundant with subsequent sections of the rule.

The text in 100.03.r.xiii., “Manufacturers’ specifications and warranties for all materials that will or may come in contact with process waters” remains concerning to IMA, since manufacturers’ specifications and warranties for much of the ore processing equipment and materials would not typically be available until near the end of construction, not for the permit application.

Moreover, it is unclear what materials that this requirement applies to, i.e., does IDEQ require manufacturers’ specifications and warranties for every piece of pipe, pump, valve, vessel, liner, shaft, impeller, screen, hopper, cyclone, grinding media, reagent, and instrumentation in the ore processing plant? To allow timely Department review of critical containment elements, defer review of other elements until they are feasibly available, and avoid an overly exhaustive requirement for review of “all materials” which seems to include minor components such as pump parts, we recommend that IDEQ reduce the scope and move most of the manufacturer’s warranty submittals to the as-built (Final Construction Report) submittal, while retaining early review of critical liner components. This could be accomplished with the following changes:

xiii. Manufacturers’ specifications and warranties for all materials that will or may come in contact with process waters all manufactured components of process pond, leach pad, or tailings impoundment liner systems.

Cost Recovery Agreement (Section 100.04)

IMA appreciates IDEQ’s revisions to the cost recovery agreement section, being confined to “reasonable fees for processing permit applications” pursuant to Idaho Code § 39-118A. We would recommend revising the last sentence in this section as follows:

100.04.iv. — ~~In lieu of paying a fee at the time the application is submitted, Prior to submittal of the preliminary design report, an applicant may shall enter into an agreement with the Department for actual costs incurred to review the preliminary design report and other submittals. process an the permit application or any permit modification requests, and issue a final permit or permit modification, and review final facility designs prior to construction if such designs were not included in the permit application review record plans and specifications following construction, review construction quality control documentation, review submittals, and for any other services rendered by the Department through permanent closure. The cost recovery agreement may provide for actual costs incurred by the Department for any other service rendered pursuant to these rules or a permit. The applicant shall not commence operations at the cyanidation facility until the terms of the agreement have been met, including that the Department has been reimbursed for all actual costs incurred for the permitting process. The cost recovery agreement may provide for actual costs incurred by the Department for any other service rendered pursuant to these rules or a permit so long as agreed to in advance by the applicant.~~

Permit Conditions (Section 500)

IMA believes that construction of a modern cyanidation facility, which may include a tailings facility, will likely take a number of years to complete before operation. It is simply not feasible for an applicant to submit final plans for all components of a facility prior to commencement of construction on individual components. IDEQ can retain its right to not allow operation of the facility under the permit until all final plans and specifications for all components of the cyanidation facility have been approved and a construction report has been submitted and approved. Thus, we would propose a new subsection to address this concept as follows:

500.02. **Construction.** Construction of individual components of a cyanidation facility may commence upon approval by the Department of the final plans and specifications for that component. Provided that operation of the cyanidation facility will not be allowed until a Final Construction Report is approved by the Department in accordance with subsection 03.

500.02.03 Record Plans and Specifications. An Idaho licensed professional engineer registered in the state of Idaho must confirm in writing that all record drawings and specifications are complete and accurate. These record plans and specifications must be submitted by the permittee to the Director within thirty (30) days after the completion of the construction of each critical phase of facility development as approved by the Department. The record plans and specifications must be accompanied by final construction report. If the construction proceeded in substantial compliance does not deviate from with the approved plans and specifications, a statement to the effect may shall be submitted by the registered, professional engineer. **Manufacturers' specifications and warranties for all major equipment and liner or containment components that will or may in the normal course of operations come in contact with process water.** The Department will review the final construction report, including record plans and specifications and results of quality control and quality assurance testing, to verify that the facility was constructed in compliance with and does not deviate from the approved plans and specifications. If the Department determines that the facility was not constructed in compliance with or deviates from the approved plans and specifications, the Department shall provide the permittee written notice of necessary corrective actions within thirty (30) days of receipt of all submittals required by this subsection. In the event the Department provides such written notice, operation of the facility shall not begin until the Department inspects and provides written approval of the corrective actions. Operation of the facility may begin if the Department does not deliver to the permittee such written notice within thirty (30) days of receipt of all submittals required by this subsection. For equivalent layers manufactured by a third party installed pursuant to Subsection 200.04.b.iii., certification by the manufacturer of proper installation shall be provided in the final construction report. Department review and approval of the final construction report, including record plans and specifications, results of quality control and quality assurance testing, must be obtained before operation of the facility. Operation of the facility may begin if the Department fails to deliver a notice of approval or notice of rejection and corrective actions within thirty (30) days of receipt of all required submittals.

Permanent Closure Report (Sections 501 and 502)

As discussed in our last comment letter, we do not believe it is appropriate for two separate state agencies to approve a permanent closure report (PCP). IDL is the agency charged with approval of a PCP and release of financial assurance upon closure as specified in the Mined Land Reclamation Act. IDEQ's role in evaluating a PCP and whether closure has been achieved should be as a consulting agency to IDL, as envisioned in the Mined Land Reclamation Act. We recommend that IDEQ and IDL establish a MOA between the agencies setting forth their roles related to permanent closure. We understand from comments at the last rulemaking meeting that IDEQ believes it nevertheless has authority to require the submission and approval of a permanent closure report.

While we disagree that IDEQ review and approval of a permanent closure report is required or appropriate as permit condition, we believe there needs to be coordination and cooperation between IDL and IDEQ. We would recommend striking the last two sentences in Section 502.02 and replace with the following language:

02. Issuance of Director's Determination. Within sixty (60) days of receipt of a permanent closure report, the Director shall issue to the permittee a Director's determination of approval or disapproval of the permanent closure report. ~~The Department may evaluate permanent closure based on different performance standards than those used by the Idaho Department of Lands. The Department's evaluation will be based on applicable statutes or rules administered by the Department. The Department and the Idaho Department of Lands will cooperate in evaluating and approving a permanent closure report.~~

We look forward to working with IDEQ to finalize this rule to be submitted to the board in November 2020 as both a proposed rule and temporary rule.

Sincerely,



Benjamin J. Davenport