

REVISIONS TO PROPOSED RULE, DOCKET NO. 58-0111-0801

The revisions made to the proposed rule are highlighted. Only those portions of the proposed rule containing revisions are included.

007. DEFINITIONS.

21. Mining Activity. Recovery of a mineral from mineral-bearing deposits, which includes reclamation, extraction, excavation, overburden placement, disposal of tailings resulting from processing, and disposal of mineral extraction wastes, including tailings that are the result of extraction, waste rock, and other extraction wastes uniquely associated with mining. ()

22. Mining Area. The area on or within which one (1) or more mining activities occur. The Department shall determine the boundaries of the mining area as provided in Section 401. Distinct mining activities may constitute separate mining areas. ()

(Break in Continuity of Sections)

401. MINING.

01. Request for Setting Point(s) of Compliance. At the request of a mine operator, the Department shall set a point of compliance, or points of compliance, at which the mine operator must meet the ground water quality standards as described in Subsection 150.01. If a request is not made, the mine operator must meet the ground water quality standards in ground water both within and beyond the mining area unless the Department establishes the point(s) of compliance consistent with Subsection 401.03. Mining activities must be managed using the level of protection appropriate for the aquifer category in accordance with Subsection 150.02 and Section 301. ()

02. Application Process. ()

a. If the mine operator requests a point of compliance, or points of compliance, the mine operator shall make written application to the Department. The application shall be accompanied by a fee of two thousand five hundred dollars (\$2,500). The application shall include the following information in sufficient detail to allow the Department to establish point(s) of compliance: ()

i. Name, location, and mailing address of the mining operation; ()

ii. Name, mailing address, and phone number of the mine operator; ()

iii. Land ownership status of the mining operation (federal, state, private or public); ()

iv. The legal structure (corporation, partnership, etc.) and residence of the mine operator; ()

v. The legal description, to the quarter-quarter section, of the location of the proposed mining operation; ()

vi. Evidence the mine operator is authorized by the Secretary of State to conduct business in the state of Idaho; ()

vii. A general description of the operational plans for the mining operation from construction through final reclamation. This description shall include any proposed phases for construction, operations, and reclamation and a map that identifies the location of all mining activities; ()

viii. A preconstruction topographic site map or aerial photos extending at least one (1) mile beyond the outer limits of the mining area, identifying and showing the location and extent of the following features: ()

(1) All wells, perennial and intermittent springs, adit discharges, wetlands, surface waters and irrigation ditches: ()

(2) All public and private drinking water supply source(s) within one (1) mile of the mining area; ()

(3) All service roads and public roads; ()

(4) All buildings and structures within one (1) mile of the mining area; ()

(5) All special resource waters within one (1) mile of the mining area; and ()

(6) All Clean Water Act Section 303(d) listed streams, and their listed impairments, within one (1) mile of the mining area; ()

ix. To the extent such information is available, a description and location of underground mine workings and adits and a description of the structural geology that may influence ground water flow and direction; ()

x. Information regarding the relevant factors set forth in Subsection 401.03; and ()

xi. A proposed point of compliance, or points of compliance. ()

b. Within thirty (30) days of receipt of an application, the Department shall issue a written notice to the mine operator indicating: ()

i. That the application is complete; or ()

ii. That the Department is rejecting the application as incomplete. In such a case, the Department shall provide a list of deficiencies. Upon a determination that the application is incomplete, the Department shall refund one-half (1/2) of the application fee. ()

c. The Department shall establish the point(s) of compliance within one hundred eighty (180) days after receipt of a complete application unless the Department determines that additional time is necessary due to unusual circumstances. ()

03. Setting the Point(s) of Compliance. The point(s) of compliance shall be set as close as possible to the boundary of the mining area, taking into consideration the relevant factors set forth in Subsections 401.03.ia through 401.03.viii., but in no event shall the point(s) of compliance be within the boundary of the mining area. The mining area boundary means the outermost perimeter of the mining area (projected in the horizontal plane) as it would exist at the completion of the mining activity. The point(s) of compliance shall be set so that, outside the mining area boundary, there is no injury to current or projected future beneficial uses of ground water and there is no violation of water quality standards applicable to any interconnected surface waters. The Department's determination regarding the point(s) of compliance shall be based on an analysis and consideration of all relevant factors including, but not limited to: ()

a. The hydrogeological characteristics of the mining area and surrounding land, including any dilution characteristics of the aquifer and any natural attenuation supported by site-specific data; ()

b. The concentration, volume, and physical and chemical characteristics of contaminants resulting from the mining activity, including the toxicity and persistence of the contaminants; ()

c. The quantity, quality, and direction of flow of ground water underlying the mining area; ()

d. The proximity and withdrawal rates of current ground water users; ()

- e. A prediction of projected future beneficial uses; ()
- f. The availability of alternative drinking water supplies; ()
- g. The existing quality of the ground water, including other sources of contamination and their cumulative impacts on the ground water; and ()
- h. Public health, safety, and welfare effects. ()

04. Ground Water Monitoring and Reporting. The Department ~~may~~ shall require ground water monitoring and reporting whenever the Department sets the point(s) of compliance. The Department shall not require ground water monitoring that duplicates ground water monitoring required by other state or federal agencies as long as the mine operator provides the data to the Department. ()

- a. A ground water monitoring system required under Subsection 401.04 shall be designed to: ()
 - i. Represent the quality of background ground water that has not been affected by the mining activity; and ()
 - ii. Represent the quality of ground water passing the point(s) of compliance in order to determine compliance with ground water quality standards or effectiveness of best management practices. ()

b. When practicable, indicator monitoring wells or other devices may be required. Such indicator wells and other devices shall not be used to determine compliance with the ground water quality standards, but instead may be used to evaluate modeling results, to predict the quality of ground water at the point(s) of compliance, or to determine the effectiveness of best management practices. ()

c. All monitoring wells shall be constructed (well depth, well screen size, well screen interval, gravel pack, etc.) and developed so that ground water samples represent the quality of ground water that is relevant to current and future beneficial uses. ()

05. Coordination with Other State or Federal Agencies/Public Notice. Before setting the point(s) of compliance or requiring ground water monitoring, the Department shall coordinate with and seek recommendations from other state or federal agencies that have regulatory authority over the mining activities. The Department may provide public notice and an opportunity for public comment prior to setting or changing the point(s) of compliance. The Department shall issue a public notice after it sets the point(s) of compliance. ()

06. Limitations. Section 401 addresses only those contaminants that naturally occur in the mining area ground water or in the surrounding rock or soil and are present in concentrations above the natural background level as a result of mining activities. ()

07. Application of Provisions. The provisions set out in Section 401 apply to new mining activities or to an expansion of existing mining activities commencing after July 1, 2009. All consent orders, compliance schedules, and other agreements adopted or issued by the Department prior to July 1, 2009 pertaining to ground water protection at mine sites shall remain in full force and effect. ()

08. Change in Point(s) of Compliance/Ground Water Monitoring. ()

a. A change in the point(s) of compliance may be requested by the mine operator when there is a change in, or new information regarding, the mining activity or any of the factors set forth in Subsection 401.03. A change requested by the mine operator shall include an identification of the new proposed point(s) of compliance, a description of the cause for the change and any data supporting the change. The mine operator's request shall be handled as an application submitted pursuant to Subsection 401.02.a. and shall be subject to all other provisions of Section 401. ()

b. The Department may initiate a change in the point(s) of compliance if there is a change in, or new information regarding, the mining activity or any of the factors set forth in Subsection 401.03, and the Department determines that the change is necessary to ensure there is no injury to current or projected future beneficial uses of ground water and no violation of water quality standards applicable to any interconnected surface waters. The Department shall notify the mine operator in writing of the Department's intent to change the point(s) of compliance. The Department shall make its final decision to change the point(s) of compliance within sixty (60) days of the notice to the mine operator unless the Department and the mine operator agree more time is necessary to make the decision.

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c. The Department may require additional or new ground water monitoring or indicator wells when the Department changes the point(s) of compliance. The Department may also require additional or different ground water monitoring or indicator wells if the Department determines, based upon a change in or new information regarding the mining activity or any of the factors listed in Subsection 401.03, that the monitoring no longer meets the requirements set forth in Subsection 401.04. The mine operator may also request a change in the monitoring.

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