



IDAHO MINING ASSOCIATION

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June 26, 2015

Paula Wilson
Department of Environmental Quality
1410 North Hilton
Boise, ID 83706-1255

Sent via email to: paula.wilson@deq.idaho.gov

Re: IPDES Negotiated Rule Draft No. 6.0 (Docket No. 58-0125-1401)

Dear Paula:

The Idaho Mining Association appreciates the opportunity to comment on the subject draft rule. As we have stated previously, IMA believes DEQ should retain as much flexibility in this IPDES rulemaking as authorized under federal rules, and when appropriate, should address Idaho-specific issues. We believe such an approach is consistent with the legislature's directive to DEQ to proceed with obtaining authorization to carry out the NPDES permit program in Idaho.

We believe the administrative appeal process for the IPDES program should encourage and assist public participation in the permitting process, should be completed in a timely fashion, should respect the rights of permit applicants and should assure that permit decisions are consistent with DEQ rules and the Clean Water Act.

We believe these goals can best be met by having administrative appeals heard by a hearing officer appointed by the DEQ Director. The Director would choose from a list of qualified hearing officers that has been approved by the Board of Environmental Quality. This would assure a more impartial decision than might be otherwise made if the Director were to make the decision and would also address the conflict of interest issues contained in the Clean Water Act and its regulations.

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DEQ has also solicited comments concerning whether the appeals process should be an adjudicatory process or a record review process. We support a record review process to assure that interested parties provide all relevant information during the permit process.

We also support a very limited ability to augment the certified administrative record with information that is material to the permit decision. This should only be allowed when there are good reasons the information was not presented during the permit proceeding. Those reasons would include a need for additional evidence because of new issues raised during public comments, addressing permit terms and conditions added by DEQ after public comment and a need to explain technical terms or complex matters.

In addition, we favor an appeals process similar to that used in Montana. Only an applicant can appeal a final permit decision within the agency but a third party can initiate any appeal of that decision in district court. A third party appeal should be a record review only where the court would apply a judicial review standard that examines whether a decision was arbitrary and capricious or an abuse of discretion. This would assure an efficient permitting system and eliminate the ability of opponents of a permit decision to add months, perhaps years, to the time it takes to make a decision final.

Thank you for consideration of these comments.

Sincerely,

A handwritten signature in blue ink that reads "Jack Lyman". The signature is written in a cursive, flowing style.

Jack Lyman
Executive Vice President