

IN THE SENATE

SENATE BILL NO. 1170

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO ORE PROCESSING BY CYANIDATION; REPEALING SECTION 39-118A, IDAHO CODE, RELATING TO ORE PROCESSING BY CYANIDATION; AMENDING CHAPTER 1, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-118A, IDAHO CODE, TO ESTABLISH PROVISIONS REGARDING ORE PROCESSING BY CYANIDATION; PROVIDING THAT CERTAIN ADMINISTRATIVE RULES CONTAINED IN IDAPA 58.01.13 SHALL BE NULL, VOID, AND OF NO FORCE AND EFFECT; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section [39-118A](#), Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Chapter 1, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-118A, Idaho Code, and to read as follows:

39-118A. ORE PROCESSING BY CYANIDATION. (1) As used in this chapter, unless the context requires otherwise:

(a) "Application" means an application for a new or major modification permit.

(b) "As-built submittal" means a report regarding the constructed cyanidation facility that is stamped by an Idaho-licensed professional engineer and that is consistent with the criteria for as-built documentation and other supporting documents, including:

(i) As-built drawings; and

(ii) Quality assurance and quality control documentation demonstrating that the constructed cyanidation facility, including controls, substantially conforms to the final permit and issued for construction data package, if applicable.

(c) "Component or phase" means physical parts or locations of a cyanidation facility or temporal sequences of all or parts of a cyanidation facility, as applicable.

(d) "Controls" means any containment structures, liners, pads, equipment, devices, procedures, or systems utilized to meet the requirements of this section.

(e) "Cyanidation" means the method of extracting target precious metals from ores by treatment with cyanide solution, which is the primary leaching agent for extraction.

(f) "Cyanidation facility" means a portion of a new ore processing facility, or a material or major modification of that portion of an existing ore processing facility, that utilizes cyanidation and is intended to contain, treat, or dispose of cyanide-containing materials, including spent ore, tailings, and process water.

(g) "Cyanidation pollutants" means any chemical or constituent used or concentrated during cyanidation that is present in process water, spent ore, tailings, or other material from the cyanidation process in such concentrations or amounts that, if discharged into the environment, have the potential to cause adverse effects to any beneficial use of waters of the state or to degrade waters of the state.

(h) "Department" means the Idaho department of environmental quality.

(i) "Director" means the director of the department of environmental quality or an authorized designee.

(j) "Final permit decision" means the director's final decision to approve or deny, in whole or in part, an application for a permit or other decision to modify or revoke a previously issued permit.

(k) "Issued for construction (IFC) data package" means plans and specifications for actual construction of a cyanidation facility consistent with the criteria for the IFC data package and other supporting documents that is stamped by an Idaho-licensed professional engineer and includes the following:

(i) IFC specifications, including any storage features or secondary containments, as applicable;

(ii) A final report documenting the basis of the design;

(iii) IFC drawings depicting facility layout and typical sections;

(iv) Final capacity calculations;

(v) Final load validation, if applicable; and

(vi) Plans consistent with IFC design for closure, monitoring, water management, operations, maintenance, and surveillance.

(l) "Major modification" or "material modification":

(i) Means any change to a previously permitted cyanidation facility that the department determines will:

1. Cause, or increase the potential to cause, degradation of water or impairment to the beneficial use of waters of the state, including a new cyanide process or cyanidation facility component or phase;

2. Significantly change the capacity, location, or process of an existing cyanidation facility component, including a new cyanide process or cyanidation facility component or phase;

3. Significantly change water quality compliance criteria or monitoring points; or

4. Significantly change the site condition in a way that was not adequately described in the original permit application; and

(ii) Does not mean or include:

1. Reclamation and closure-related activities at a cyanidation facility with an existing permit that did not actively add cyanide after January 1, 2005; or

2. Relocation of buildings, structures, or other similar modifications when such activity occurs within the same site footprint of the cyanidation facility, provided that containment is maintained.

1 (m) "Permit" means a permit for a new or materially modified cyanida-
2 tion facility.

3 (n) "Procedural completeness" means that the permit application and
4 its contents contain the required information, supporting plans, and
5 documentation to allow the progression of the application to the tech-
6 nical completeness review.

7 (o) "Technical completeness" means that the permit application and its
8 contents contain designs, specifications, supporting plans, and docu-
9 mentation that comply with the provisions of this section to contain,
10 control, and treat cyanidation process water, spent ore, tailings, and
11 other material from the cyanidation process by having adequate contain-
12 ment through the use of liners, barriers, structures, or other measures
13 to prevent discharge of cyanidation pollutants into the environment
14 that would impair beneficial use of waters of the state or would degrade
15 waters of the state. For technical completeness, containment means:

16 (i) Secondary containment for process equipment, tanks, and pip-
17 ing; and

18 (ii) Primary and secondary liners associated with leach pads,
19 tailings storage facilities, and process ponds.

20 (2) (a) A new or materially modified cyanidation facility shall not be
21 constructed, operated, or closed prior to:

22 (i) Obtaining a permit from the department pursuant to the provi-
23 sions of this section and rules promulgated thereunder; and

24 (ii) Obtaining necessary financial assurance and permanent clo-
25 sure plan approvals applicable to cyanidation facilities pursuant
26 to the requirements of chapter 15, title 47, Idaho Code, and rules
27 promulgated thereunder.

28 (b) A cyanidation facility with an existing permit approved by the de-
29 partment prior to July 1, 2005, shall be subject to the applicable laws
30 and rules for ore processing by cyanidation in effect on June 30, 2005.
31 If there is a material modification of a cyanidation facility after June
32 30, 2005, all provisions of this chapter shall apply to the modification
33 or expansion. Reclamation or closure-related activities at a facility
34 with an existing cyanidation permit approved by the department that did
35 not actively add cyanide processes after January 1, 2005, shall not be
36 considered a material modification or expansion thereof.

37 (3) A cyanidation facility shall be:

38 (a) Designed with controls sufficient to contain, control, and treat
39 cyanidation process water, spent ore, tailings, and other material from
40 the cyanidation processes to prevent discharge of cyanidation pollu-
41 tants into the environment that would impair beneficial use of waters of
42 the state or degrade waters of the state. Such controls shall be based
43 on generally accepted design standards that are consistent with gener-
44 ally accepted engineering practices and quality control and quality as-
45 surance procedures; and

46 (b) Maintained and operated in a manner that prevents discharge of
47 cyanidation pollutants into the environment that would impair benefi-
48 cial use of waters of the state or degrade waters of the state.

49 (4) The department shall not issue a permit pursuant to this section un-
50 less a permanent closure plan for the cyanidation facility has been submit-

ted for approval under chapter 15, title 47, Idaho Code. Any permit issued by the department pursuant to this section shall prohibit construction and operation of the cyanidation facility until the permittee submits proof to the department that financial assurance for the cyanidation facility permanent closure plan has been provided as required by chapter 15, title 47, Idaho Code.

(5) (a) The director may deny a permit application if:

(i) The application is procedurally or technically incomplete and cannot be made complete with additional clarifying or supplemental information as requested by the department and provided by the applicant;

(ii) The cyanidation facility, or any component or phase thereof, as proposed, cannot be conditioned for construction, operation, and closure in a way that complies with the provisions of this section and rules promulgated thereunder; or

(iii) Any payment required by the cost recovery agreement is due and unpaid.

(b) If an application is denied, the director shall provide written notice to the applicant explaining the basis for the rejection.

(6) The department may request that the applicant provide supplemental or clarifying information at any point in the permitting process pursuant to this section and rules promulgated thereunder until a final permit decision is issued. The applicant's failure or refusal to correct deficiencies or supply additional information as requested may result in permit denial.

(7) (a) Before conducting a pre-application conference or submitting a preliminary design report, the applicant and department shall execute a cost recovery agreement. The cost recovery agreement shall provide for the recovery of the actual costs incurred by the department during the permitting process pursuant to this section and rules promulgated thereunder. The cost recovery agreement may provide for recovery of actual costs incurred by the department for any other service rendered pursuant to this section and rules promulgated thereunder if the applicant so agrees. The permitting process may include but is not limited to:

(i) Pre-application meetings and interactions with the applicant;

(ii) Reviewing pre-application submittals, including the preliminary design report, conceptual designs, draft plans, and other supporting documents;

(iii) Conducting procedural completeness and technical reviews;

(iv) Reviewing supplemental information and revised documents;

(v) Reviewing final designs, supporting plans, and other documents;

(vi) Developing a draft permit and fact sheet;

(vii) Reviewing and preparing responses to public comments;

(viii) Developing a final permit and fact sheet;

(ix) Contracting with a third-party consultant; and

(x) Other activities related to processing permit applications.

(b) After a cost recovery agreement is executed, the department shall conduct a pre-application conference with the applicant. After the

1 pre-application conference is held, the applicant shall submit a pre-
2 liminary design report and permit application.

3 (8) A permit application shall:

4 (a) Address all of the criteria and standards provided in this section
5 and rules promulgated thereunder;

6 (b) Include the proposed plans and specifications for controls to con-
7 tain, control, and treat cyanidation process water, spent ore, tail-
8 ings, and other material from the cyanidation processes that the pro-
9 posed cyanidation facility will have to prevent discharges of cyanida-
10 tion pollutants into the environment that would impair beneficial use
11 of waters of the state or degrade waters of the state. The proposed de-
12 signs and specifications shall be based on generally accepted engineer-
13 ing practices and quality control and quality assurance procedures; and
14 (c) Not be required to have the level of design and engineering neces-
15 sary for the IFC data package, provided that in the final permit the di-
16 rector may condition construction on the review and approval of an IFC
17 data package in accordance with subsection (18) of this section.

18 (9) A water quality monitoring plan for a cyanidation facility:

19 (a) Shall specify points of compliance and associated water quality
20 compliance criteria for cyanidation pollutants for surface water and
21 ground water;

22 (b) Shall specify monitoring points and threshold concentrations for
23 parameters that provide for early detection of cyanidation pollutant
24 discharge; and

25 (c) May not be required to contain points of compliance, compliance
26 criteria, or monitoring locations for contaminants that are covered by
27 other permits issued by the department, including ground water points
28 of compliance established by rule for proposed mine activities, includ-
29 ing cyanidation facilities.

30 (10) (a) The department's review of any application made pursuant to
31 this section shall not duplicate or conflict with other permits or the
32 permitting process for other permits required pursuant to Idaho law,
33 including permits administered by the department regarding protecting
34 air, surface water, and ground water resources and authorizations made
35 by the Idaho department of lands regarding reclamation and closure of a
36 cyanidation facility. To the extent that other permits under Idaho law
37 do not address or regulate potential cyanidation pollutants discharged
38 from a cyanidation facility, the department may review and address such
39 cyanidation pollutants or other pollutants in accordance with the pro-
40 visions of this section and rules promulgated thereunder.

41 (b) The department's review of an application shall be limited to the
42 criteria and standards provided in this section and rules promulgated
43 thereunder.

44 (c) The department's review of an application for a major modification
45 of a permit shall be limited to the proposed material modifications to
46 the cyanidation facility that are required to be included therein.

47 (11) (a) Within one hundred eighty (180) days of receiving an applica-
48 tion, the director shall deliver to the applicant a written notice of
49 rejection or approval. If the director fails to deliver a notice of
50 rejection or approval within such time period, the submitted applica-

tion shall be deemed approved and the applicant may proceed with the construction, operation, or closure as if notice of approval had been received from the director.

(b) Within thirty (30) days of receiving an application, the director shall review the application for procedural completeness, in whole or in part, and issue written notice to the applicant and the Idaho department of lands indicating that the application, in whole or in part for specific components or phases, is procedurally complete or procedurally incomplete. If the application, or any part thereof, is procedurally incomplete, the director shall explain the specific deficiencies and may request additional information. A determination that an application, or any part thereof, is procedurally complete shall not preclude the department from requiring the applicant to submit additional information for the department to continue processing the application.

(c) Within sixty (60) days of the notice that the application is procedurally complete, in whole or in part, the director shall complete review of the application for technical completeness, in whole or in part. If the director determines that the application, or specific components or phases thereof, satisfies the technical completeness requirements provided in this section and rules promulgated thereunder, the director shall:

- (i) Prepare a draft permit and fact sheet for the application or a specific component or phase thereof pursuant to the provisions of subsections (13) and (14) of this section;
- (ii) Provide public notice pursuant to subsections (21) through (23) of this section;
- (iii) Allow public comment pursuant to subsection (26) of this section; and
- (iv) Hold a public meeting pursuant to subsection (25) of this section.

(12) (a) The department may contract with a third-party consultant to support review of an application, in whole or in part.

(b) The director may, in his discretion, review and approve the application in part for specific components or phases of a cyanidation facility if such components or phases of the facility and the provisions of the application with respect thereto satisfy the requirements of this section. The director shall obtain the consent of the applicant prior to reviewing an application in part, and if obtained, shall work with the applicant to create a schedule for review of the application in part. Approving a component or phase of an application shall not imply the approval of the remaining components or phases. If an application is reviewed in part, the remaining components or phases of the application:

- (i) Shall not be subject to the timing requirements of subsection (11) of this section;
- (ii) Shall not be considered permit modifications if subsequent changes to the application do not constitute material modifications from the original application; and
- (iii) Shall be subject to public notice and comment provisions of subsections (21) through (26) of this section.

1 (13) A draft or final permit shall contain:

2 (a) All conditions necessary to require controls sufficient to prevent
3 or mitigate the potential for the discharge of cyanidation pollutants
4 into the environment that would impair beneficial use of waters of the
5 state or degrade waters of the state;

6 (b) Any information incorporated into the permit by reference; and

7 (c) Any and all other conditions the director finds necessary to ensure
8 compliance with this section and rules promulgated thereunder, includ-
9 ing but not limited to:

10 (i) Review and approval of an IFC data package prior to authoriz-
11 ing commencement of construction; and

12 (ii) Review and approval of a permanent closure plan and issuance
13 of financial assurance pursuant to chapter 15, title 47, Idaho
14 Code, and rules promulgated thereunder.

15 (14) A fact sheet shall be published with a draft permit. The fact sheet
16 shall:

17 (a) State the principal facts and describe the proposed activity sought
18 to be permitted;

19 (b) Briefly describe the proposed cyanidation facility, operating
20 plan, and application and state whether the application is being re-
21 viewed in whole or in part;

22 (c) State any significant legal and policy questions considered, in-
23 cluding statutes, regulations, and references to the administrative
24 record;

25 (d) Summarize the conditions imposed in the permit; and

26 (e) Provide the name and phone number of the department representative
27 to contact for additional information.

28 (15) A final permit shall be modified, as necessary, based on review of
29 public comments, supplemental information received, and other appropriate
30 reasons. The fact sheet shall be updated to reflect public comments, supple-
31 mental information received, and modifications, if any, to the permit, and
32 shall be published with the final permit.

33 (16) (a) A final permit issued pursuant to this section shall expire in
34 two (2) years if construction has not been commenced. The applicant may
35 request, in writing, that the two (2) year period be extended. The di-
36 rector may, in his discretion, allow a reasonable extension thereof.

37 (b) A final permit shall remain valid until the director determines
38 that permanent closure is completed or the director revokes or modifies
39 the permit.

40 (17) Construction of a new or a materially modified cyanidation facil-
41 ity shall not deviate from the plans and specifications approved by the de-
42 partment.

43 (18) (a) A final permit issued pursuant to this section shall authorize
44 the immediate commencement of construction and operation of a cyanida-
45 tion facility in accordance with the terms of the permit.

46 (b) A final permit may condition the commencement of construction of
47 a cyanidation facility or a component or phase thereof on the depart-
48 ment's review and approval of an IFC data package. If an applicant is
49 required to provide an IFC data package, the director:

(i) Shall meet with the applicant at least sixty (60) days prior to the submittal of the IFC data package to discuss the status of the data package and any minor modifications from the final permit that the applicant is proposing;

(ii) May open a public comment period for no more than thirty (30) days after receiving the IFC data package;

(iii) Shall complete review of the IFC data package within sixty (60) days from the director's receipt of the data package to confirm that the data package is consistent with the plans and specifications approved in the final permit; and

(iv) Shall authorize construction, in whole or in part, if the director finds that the IFC data package meets the requirements of this section and rules promulgated thereunder, and that all other conditions of the final permit have been satisfied.

(19) Within thirty (30) days of completing construction on a cyanidation facility or component or phase thereof, if applicable, the operator shall submit an accurate as-built submittal depicting that actual construction of the cyanidation facility or component or phase thereof, if applicable, does not deviate from the plans and specifications approved in the permit and IFC data package, if applicable.

(20) Public notice shall not be required when a preliminary design report submitted by an applicant is rejected or when an application, or any part thereof, is deemed incomplete.

(21) The director shall give public notice of:

(a) A determination that an application is procedurally complete;

(b) Publication of a draft permit and fact sheet;

(c) Any authorized public comment period or public meeting;

(d) Issuance of a final permit and fact sheet;

(e) Approval to construct, if the final permit conditioned construction on the department's review and approval of an IFC data package;

(f) A decision to reject a permit application;

(g) A decision to revoke a permit; and

(h) The filing of any appeal from any decision of the director with respect to any permit application for a new or materially modified cyanidation facility.

(22) A public notice issued pursuant to this section shall contain:

(a) A description of the cyanidation facility and its location;

(b) A description of the public involvement procedures;

(c) Information regarding the public comment period, if applicable;

(d) Information regarding the time and place of the public meeting, if applicable;

(e) Information on how to obtain additional available public information;

(f) The name and phone number of the department representative to contact for additional information; and

(g) Such other information as the department deems necessary.

(23) Public notice shall be given by:

(a) Certified or electronic mail to:

(i) The applicant;

(ii) Persons on the public notice mailing list developed pursuant to subsection (24) of this section; and

(iii) All federal, tribal, state, and local government entities who have an interest in the outcome of the permitting process;

(b) Publication for two (2) consecutive weeks in a daily or weekly newspaper of general circulation in the area of the proposed cyanidation facility; and

(c) Any other method reasonably calculated to give actual notice to potentially affected persons.

(24) The department shall develop a mailing list for public notices issued pursuant to this section by recording the names and contact information of those who request, in writing, to be on such list. The department shall make available on its website the ability to join the mailing list and shall periodically publish notice of the ability to join the mailing list in the local press, regional and state-funded newsletters, environmental bulletins, state law journals, or similar publications. The department may periodically update the mailing list by requesting written indication of continued interest from those listed and may delete from the list the name of any person who fails to respond to the department's request.

(25) Within thirty (30) days of the public notice of publication of a draft permit, the department shall hold a public meeting.

(26) Public comment on a draft permit shall be permitted for sixty (60) days beginning on the date of the initial public notice of publication of a draft permit. Only written public comments received during the public comment period shall be accepted and considered by the department.

(27) The department shall respond to all written public comments individually, except when comments can be responded to by theme or topic. All written comments received during this public comment period and the department's response thereto shall be made publicly available.

(28) Within thirty (30) days of the end of the public comment period, the director shall provide public notice of the final permit decision. This notice shall:

(a) Specify which provisions, if any, of the draft permit have been changed in the final permit and summarize the reasons for such changes;

(b) Include information on how to view the public comments received and the department's responses thereto; and

(c) Include information regarding the procedures for administrative appeal under applicable law.

(29) The Idaho department of lands shall participate in public comment and meetings regarding performance criteria for permanent closure of a cyanidation facility.

(30) The director and the applicant may agree to pause or extend the statutory time frames established in this section for a reasonable time, provided that:

(a) The sixty (60) day technical completeness review may be paused upon the agreement of the director and the applicant for a period not to exceed one (1) year from the date of the director's notice of procedural completeness to allow the applicant to submit additional information requested by the department; and

1 (b) Time frames requiring action by the director or department shall
2 not be extended by more than sixty (60) days.

3 (31) Research and development activities, including bench and pilot
4 scale testing facilities, shall be exempt from the provisions of this sec-
5 tion and rules promulgated thereunder.

6 (32) The provisions of this section shall be applied retroactively to
7 all permit applications submitted to the department on or before January 1,
8 2025, that are still under review by the department as of July 1, 2025.

9 (33) (a) The department shall promptly commence an administrative re-
10 view of IDAPA 58.01.13 and shall promulgate rules, subject to legisla-
11 tive approval, to bring such rules into compliance with the provisions
12 of this section.

13 (b) The department shall have until July 1, 2025, to issue temporary
14 rules, if necessary, to administer the provisions of this section.

15 SECTION 3. The rules contained in IDAPA 58.01.13, Department of Envi-
16 ronmental Quality, relating to Rules for Ore Processing by Cyanidation, Sec-
17 tion 100., Subsection 04.; Section 300.; Section 400.; Section 450.; and
18 Section 550., shall be null, void, and of no force and effect on and after
19 passage and approval of this act.

20 SECTION 4. An emergency existing therefor, which emergency is hereby
21 declared to exist, this act shall be in full force and effect on and after its
22 passage and approval.