

IN THE SENATE

SENATE BILL NO. 1197

BY RESOURCES AND ENVIRONMENT COMMITTEE

AN ACT

1 RELATING TO MINES AND MINING; AMENDING SECTION 47-1509, IDAHO CODE, TO RE-
2 VISE CERTAIN REQUIRED RECLAMATION ACTIVITIES; AND AMENDING SECTION
3 47-1512, IDAHO CODE, TO REVISE BOND AMOUNT PROVISIONS, TO PROVIDE FOR
4 WRITTEN NOTICE BY THE STATE BOARD OF LAND COMMISSIONERS TO AN OPERATOR
5 OF REJECTION OF A REQUEST FOR BOND RELEASE UPON THE BOARD'S DETERMINA-
6 TION THAT THE REQUIREMENTS OF A RECLAMATION PLAN OR PERMANENT CLOSURE
7 PLAN HAVE NOT BEEN MET, AND TO PROVIDE FOR CONTENT OF THE NOTICES.
8

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

10 SECTION 1. That Section 47-1509, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 47-1509. PROCEDURES IN RECLAMATION. (a) Except as otherwise provided
13 in this act, every operator who conducts exploration or surface mining op-
14 erations which disturb two (2) or more acres within the state of Idaho shall
15 perform the following reclamation activities:

16 (1) Ridges of overburden shall be leveled in such manner as to have a
17 minimum width of ten (10) feet at the top.

18 (2) Peaks of overburden shall be leveled in such a manner as to have a
19 minimum width of fifteen (15) feet at the top.

20 (3) Overburden piles shall be reasonably prepared to control erosion.

21 (4) Where water run-off from affected lands results in stream or lake
22 siltation in excess of that which normally results from run-off, the
23 operator shall prepare affected lands and adjacent premises under the
24 control of the operator as necessary to meet the requirements autho-
25 rized under chapter 1, title 39, Idaho Code, ~~or the conditions of the~~
26 ~~water run-off prior to commencing surface mining or exploration opera-~~
27 ~~tions, whichever is the lesser standard.~~

28 (5) Roads which are abandoned shall be cross-ditched insofar as neces-
29 sary to avoid erosion gullies.

30 (6) Exploration drill holes shall be plugged or otherwise left so as to
31 eliminate hazards to humans or animals.

32 (7) Abandoned affected lands shall be topped to the extent that such
33 overburden is reasonably available from the pit, with that type of over-
34 burden which is conducive to the control of erosion or the growth of the
35 vegetation which the operator elects to plant thereon.

36 (8) The operator shall conduct revegetation activities on the mined ar-
37 eas, overburden piles, and abandoned roads in accordance with the pro-
38 visions of this act.

39 (9) Tailings ponds shall be reasonably prepared in such a condition
40 that they will not constitute a hazard to human or animal life.

41 (b) The board may request, in writing, that a given road or portion
42 thereof not be cross-ditched or revegetated, and upon such request, the op-

1 erator shall be excused from performing such activities as to such road or
2 portion thereof.

3 (c) Every operator who conducts exploration or surface mining opera-
4 tions which disturb less than two (2) acres within the state of Idaho shall,
5 wherever possible, contour the lands so disturbed to approximate the previ-
6 ous contour of the lands.

7 (d) The operator and board may agree, in writing, to do any act with re-
8 spect to reclamation above and beyond the requirements herein set forth.

9 SECTION 2. That Section 47-1512, Idaho Code, be, and the same is hereby
10 amended to read as follows:

11 47-1512. PERFORMANCE BOND -- REQUISITES. (a) Prior to conducting any
12 surface mining operations on a mine panel covered by an approved reclamation
13 plan or operating a cyanidation facility covered by an approved permanent
14 closure plan, an operator shall submit to the board a bond meeting the re-
15 quirements of this section.

16 (1) The penalty of the initial reclamation bond filed prior to con-
17 ducting any surface mining operations on a mine panel shall be in an
18 amount determined by the board to be the estimated reasonable costs
19 of reclamation required in this chapter, in the event of failure to
20 reclaim by an operator, of affected lands proposed to be mined during
21 the next calendar year plus ten percent (10%) of such costs as to the
22 acreage of affected land designated by the operator pursuant to section
23 47-1506(a) (1) (vi), Idaho Code, and subsection (b) of this section.

24 (2) The penalty of the initial permanent closure bond filed prior to
25 operating a cyanidation facility shall be in an amount determined by the
26 board to be the estimated reasonable costs to complete the activities
27 specified in the permanent closure plan required in this chapter, in the
28 event of the failure of an operator to complete those activities, plus
29 ten percent (10%) of such costs. In setting the bond amount, the board
30 shall avoid duplication with bonds and sureties deposited with other
31 governmental agencies.

32 (3) The determination of the bond amount shall constitute a final de-
33 cision subject to judicial review as set forth in subsection (a) of sec-
34 tion 47-1514, Idaho Code. In lieu of any bond required hereunder, the
35 operator may deposit cash and governmental securities with the board,
36 in an amount equal to that of the required bond, on the conditions as
37 prescribed in this section.

38 (b) Prior to the time that lands designated to become affected lands
39 on a mine panel, in addition to those designated pursuant to section
40 47-1506(a) (1) (vi), Idaho Code, become affected land, the operator shall
41 submit to the board a bond meeting the requirements of section 47-1512(c),
42 Idaho Code, and the penalty of such bond shall be in the amount necessary to
43 insure the performance of the duties of the operator under this chapter as
44 to such affected lands actually proposed to be mined within the next calen-
45 dar year. If additional acreage is subsequently proposed to be mined by an
46 operator, the penalty of such bond shall be in an amount determined by the
47 board to be the estimated reasonable costs of reclamation required by this
48 chapter, in the event of failure to reclaim by an operator, of affected lands

1 proposed to be mined during the next calendar year plus ten percent (10%) of
2 such costs.

3 (c) Except as provided in this subsection, no bond for reclamation sub-
4 mitted pursuant to this chapter shall exceed ~~two fifteen~~ thousand ~~five hun-~~
5 ~~dered~~ dollars (~~\$2,500~~15,000) for any given acre of such affected land. The
6 board may require a bond in excess of ~~two fifteen~~ thousand ~~five hundred~~ dol-
7 lars (~~\$2,500~~15,000) for any given acre of affected land only when the follow-
8 ing conditions have been met:

9 (1) The board has determined that such bond is necessary to meet the
10 requirements of sections 47-1506, 47-1509, 47-1510 and 47-1511, Idaho
11 Code.

12 (2) The board has delivered to the operator, in writing, a notice set-
13 ting forth the reasons it believes such bond is necessary.

14 (3) The board has conducted a hearing where the operator is allowed to
15 give testimony to the board concerning the amount of the proposed bond.
16 The hearing shall be held under such rules as promulgated by the board.
17 This requirement for a hearing may be waived, in writing, by the opera-
18 tor. Any hearing held shall, at the discretion of the director, extend
19 the time, up to thirty (30) days, in which the board must act on a plan
20 submitted.

21 (d) Except as provided in this subsection, no bond submitted for perma-
22 nent closure of a cyanidation facility pursuant to this chapter shall exceed
23 five million dollars (\$5,000,000). The board may require a bond in excess of
24 five million dollars (\$5,000,000) for a cyanidation facility only when the
25 following conditions have been met:

26 (1) The board has determined that such bond is necessary to meet the re-
27 quirements of this chapter.

28 (2) The board has delivered to the operator, in writing, a notice set-
29 ting forth the reasons it believes such bond is necessary.

30 (3) The board has conducted a hearing where the operator is allowed to
31 give testimony to the board concerning the amount of the proposed bond.
32 The hearing shall be held under such rules as promulgated by the board.
33 This requirement for a hearing may be waived, in writing, by the opera-
34 tor. Any hearing held shall, at the discretion of the director, extend
35 the time, up to sixty (60) days, in which the board must act on the perma-
36 nent closure plan submitted.

37 (e) Any bond required under this chapter to be filed and maintained
38 with the board shall be in such form as the board prescribes, payable to the
39 state of Idaho, conditioned that the operator shall faithfully perform all
40 requirements of this chapter and comply with all rules of the board in ef-
41 fect as of the date of approval of the plan in accordance with the provisions
42 of this chapter. An operator may at any time file a single bond in lieu of
43 separate bonds filed or to be filed pursuant to this chapter, provided that
44 the penalty of such single bond shall be equal to the total of the penalties
45 of the separate bonds being combined into a single bond. Further, any bond
46 provided to another governmental agency that also meets the requirements in
47 this section shall be deemed to be sufficient surety for the purposes of this
48 chapter.

49 (f) A bond filed as above prescribed shall not be cancelled by the
50 surety, except after not less than ninety (90) days' notice to the board.

1 Upon failure of the operator to make substitution of surety prior to the ef-
2 fective date of cancellation of the bond or within thirty (30) days following
3 notice of cancellation by the board, whichever is later, the board shall have
4 the right to issue a cease and desist order and seek injunctive relief to
5 stop the operator from conducting operations covered by such bond until such
6 substitution has been made.

7 (g) If the license to do business in this state of any surety, upon a
8 bond filed with the board pursuant to this chapter, shall be suspended or re-
9 voked, the operator, within thirty (30) days after receiving notice thereof
10 from the board, shall substitute for such surety a good and sufficient corpo-
11 rate surety licensed to do business in this state or other surety acceptable
12 to the board. Upon failure of the operator to make substitution of surety,
13 the board shall have the right to issue a cease and desist order and seek in-
14 junctive relief to stop the operator from conducting operations covered by
15 such bond until such substitution has been made.

16 (h) When an operator shall have completed all reclamation requirements
17 under the provisions of this chapter as to any affected land, he shall no-
18 tify the board. Within thirty (30) days after the receipt of such notice,
19 the board shall notify the operator as to whether or not the reclamation per-
20 formed meets the requirements of the reclamation plan pertaining to the land
21 in question.

22 (1) Upon the determination by the board that the requirements of the
23 reclamation plan in question have been met as to said lands, the amount
24 of bond in effect as to such lands shall be reduced by an amount desig-
25 nated by the board to reflect the reclamation done.

26 (2) Upon a determination by the board that the requirements of the
27 reclamation plan in question have not been met as to said lands, it shall
28 deliver to the operator, in writing, a notice of rejection of the re-
29 quest for bond release and shall set forth in said notice the reasons
30 for such rejection, the factual findings upon which such rejection is
31 based, the manner in which the reclamation fails to fulfill the require-
32 ments of the reclamation plan, and the changes necessary to comply with
33 the requirements of the reclamation plan.

34 (i) When an operator shall have completed an activity specified in an
35 approved permanent closure plan he may notify the board. Within thirty (30)
36 days after the receipt of such notice, the board shall notify the operator as
37 to whether or not the activity performed meets the requirements of the per-
38 manent closure plan. In determining whether or not an activity under the
39 statutory responsibility of the department of environmental quality meets
40 the requirements of the permanent closure plan, the board shall consult with
41 that department.

42 (1) Upon the determination by the board that the activity meets the re-
43 quirements of the permanent closure plan, the bond for permanent clo-
44 sure shall be reduced by an amount designated by the board to reflect the
45 activity completed.

46 (2) Upon a determination by the board that the requirements of the per-
47 manent closure plan in question have not been met as to said lands, it
48 shall deliver to the operator, in writing, a notice of rejection of the
49 request for bond release and shall set forth in said notice the reasons
50 for such rejection, the factual findings upon which such rejection is

1 based, the manner in which the activity fails to fulfill the require-
2 ments of the permanent closure plan, and the changes necessary to comply
3 with the requirements of the permanent closure plan.

4 (j) An operator may withdraw any land previously designated as affected
5 land within a mine panel, provided that it is not already affected land, and
6 in such event, he shall notify the board and the amount of the bond in effect
7 as to the lands in that mine panel shall be reduced by an amount designated
8 by the board as the amount which would have been necessary to reclaim such
9 lands.